



Consular and Diplomatic Protection

Legal framework in the EU Member States

Consular and Diplomatic Protection. Legal Framework in the EU Member States

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Consular and Diplomatic Protection Legal Framework in the EU Member States

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- websites (in general websites of Ministry of Foreign Affairs of EU Member States or of other institutional bodies)
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Internal links allow cross reference between different sections of the Report. In particular in Chapter 3 *Hypertext Index Tables* concerning various topics tackled in national reports are available. Starting from each of these tables readers can display the single sections of each national Report regarding a specific topic.

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Executive summary

The current document is the Final Report on “**Consular and Diplomatic Protection - Legal Framework in the EU Member States**” foreseen as deliverable 3.1. in the CARE (*Citizens Consular Assistance Regulation in Europe*) project work plan.

The report presents the legislation and practice of the 27 EU Member States as to the consular (and diplomatic) protection of their own citizens, of other Union citizens and their non-EU family members, resident foreign citizens, stateless persons, refugees and persons benefiting by secondary international protection. It also proposes a comparative analysis of the legal framework and practice of the 27 Member States, highlighting, where it is the case, any discrepancies found between the legal frameworks of EU Member States. It aims at contributing to the work carried out by the European Commission in order to fully implement Article 23 TFEU.

The current Report is structured in four Chapters, each of them assessing the issue of consular protection from different perspectives.

Chapter 1, after providing a brief overview of the CARE project background (**Section 1**), examines, in **Section 2**, the multilateral and bilateral treaties and arrangements concluded by the EU countries with relevance to the issue of consular assistance given to EU citizens by Member States other than their own home State. The Section analyses the content of the two regional arrangements concluded between the Member States before their accession to the Union and also of the bilateral agreements concluded by the Member States before and after their accession to the Union. Interestingly, it was found that the subject matter of some of these agreements is wider than the consular functions laid down in Decision 95/553/EC, particularly Art 5(1). Additionally, several important conclusions result from the analysis of the still in force multilateral and bilateral agreements concluded by the Member States in the framework of consular assistance: first and foremost it was concluded that the multilateral agreement fundamental for the area of consular assistance – the Vienna Convention on Consular Relations (VCCR) – was ratified by all of the EU countries, and for some of them, it represents the sole domestic legislative framework regulating the field of consular assistance¹; secondly, it resulted that the European legal framework,² on the one hand,

¹ See more details on this category of EU countries in Chapter 3, [Section 2.4.1](#).

² In this Report, the [European legal framework on consular protection](#) refers also to the two important Decisions concluded in the area of consular protection: Decisions 95/553/EC [*Decision of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations*] and 96/409/CFSP [*Decision of the Representatives of the Governments of the Member States, meeting within the Council of 25 June 1996 on the establishment of an emergency travel document*], in addition to the soft law adopted in the field of consular assistance consisting of Council Guidelines [*Guidelines on consular protection of EU citizens in third countries* - rev. 2 (10109/2/06), 26/06/2006] and the Commission’s Green Paper [*Diplomatic and consular protection of Union citizens in third countries* (COM/2006/712 final), 28/11/2006], Action Plan [*Effective consular protection in third countries: the contribution of the European Union - Action Plan 2007-2009* - Communication from the Commission, 05/12/2007] and impact assessment of the implementation of the Action Plan. Therefore, the term *European* is not limited to denoting Union legal acts but also international agreements concluded only between the Member States.

developed certain international norms regulating the field of consular protection, by, *inter alia*, elaborating specific Union principles on the application of Art. 8 of the Vienna Convention on Consular Relations to the Union legal order and, on the other, that the Union framework lacks definitions of concepts³ and sometimes implementing guidelines of Art. 20(2)(c) which means that the Union norms have to be clarified by making use of the norms of public international law governing the field of consular and diplomatic protection; thirdly, in light of the possibility for discretionary objection of the receiving State to the practice of consular functions being exercised by a third State under Article 8 of the Vienna Convention on consular relations, former Art. 20 TEC (now Art. 23 TFEU) envisaged to make sure that the Member States obtain the formal agreement of the receiving non-EU State as regards consular assistance provided by an EU country to unrepresented EU citizens other than their own citizens. The Article expressly provides for the obligation of the EU countries to carry out negotiations with third States for the conclusion of international agreements which will formally ensure a continuous exercise of consular assistance. However, according to the information made available by the Country Correspondents, the majority of the EU countries have not started such formal negotiations, consequently, nor have they concluded such international agreements. On the other hand, it results from the national Reports that neither the already existing international agreements concluded by the EU countries with third States in the field of consular cooperation have been amended in order to ensure the effectiveness of the aforementioned Articles.

Section 2 also includes an in-depth analysis of the international agreements concluded by the EU countries in the field of consular cooperation and assistance: the two regional arrangements between EU countries having close historical ties, namely the Scandinavian Convention (also known as the Helsinki Treaty) and the Baltic Convention. The Contracting Parties to the former agreement are the five Scandinavian States and the Contracting Parties to the latter agreement are the three Baltic States⁴. In its own way, each of these agreements handles the consular relations between the Contracting Countries and, in a further step, regulates the relationship between the Contracting States and their citizens and those of the other Contracting States. After examining the content of the Helsinki Treaty and of the Baltic Convention, several leading principles of consular assistance have been identified as being pursued by both of the regional arrangements: firstly, the principle that the Contracting Parties shall assist citizens of any of the other Contracting Party to the Agreement, should this Party not be represented in the receiving State (which is similar to the principles envisaged by Art. 23 TFEU); a second principle is that assistance can only be granted if the receiving State⁵ does not object to this assistance (similar to the principle laid down in Art. 8 of the VCCR). In addition to these agreements other formal and informal bilateral arrangements are concluded among certain EU countries in the field of consular protection and cooperation⁶ which include similar principles to those in the foregoing regional arrangements.

³ For example, the EU norms do not provide for a definition of the concept of *functions of the consular and diplomatic authorities* of the Member States.

⁴ In addition to these two older regional arrangements, Portugal has taken an initiative in negotiating an Agreement on Consular Cooperation with the Members of the Portuguese Speaking Countries Community (CPLP) (*Acordo de Cooperação Consular entre os Estados membros da Comunidade dos Países de Língua Portuguesa*). However, the agreement has not yet entered into force.

⁵ The *receiving State* is the State where the person is located, which is a country other than the country of nationality and in the framework of this research it is usually a non-EU Member State.

⁶ The content of these agreements is presented and analysed in [Chapter 1, Section 2](#). In Chapter 3 on the Comparative Analysis, it is shown that the regional arrangements conclude between the EU countries and

Following Section 2, the research continues in a separate Section of Chapter 1 – **Section 3** – which outlines the evolution of consular and diplomatic protection as foreseen by the European Treaties, starting with the political work carried out in the European Political Cooperation framework and continuing with the innovations brought in by the Maastricht Treaty and the following Treaties’ amendments with a specific attention paid to the recent developments found in the Lisbon Treaty and the EU Charter on Fundamental Rights. The innovations introduced by the Lisbon Treaty are heralded as having the force to drastically change the area of consular and diplomatic protection of the EU citizens, from an area entirely governed by the sovereign powers of the EU countries into an area where the Union has the competence to take common, uniform rules aimed at protecting its citizens also outside the borders of the Union. On the basis of Art. 23(2) TFEU, the Council now has express internal competence to act in the field of consular and diplomatic protection. Action can be taken by way of directives establishing the coordination and cooperation measures adopted by a special legislative procedure, meaning that the Council is the only Union Institution to adopt the legislative act, the European Parliament will only be consulted. According to Arts. 17(2) TEU and 23(2) TFEU, the Commission has the right of initiative; therefore, directives can be adopted on the basis of a proposal from the Commission. An additional salient amendment introduced by the Treaty of Lisbon which further transforms the area of consular and diplomatic protection from an inter-governmental to a supranational area and facilitates the consular and diplomatic protection of the Union citizens, is the extension of the qualified majority voting procedure over the area of consular and diplomatic protection. The Court of Justice will have full jurisdiction to review the Council’s future directives, in contrast with the present situation, where the EC and the CFSP Decisions can only, to a certain extent, be judicially reviewed, i.e., with respect to Art. 4(3) TEU⁷. The changes brought in by the Treaty of Lisbon to the Union’s competence in the field of consular and diplomatic protection are probably the result of the newly introduced general objective of the Union to contribute to the protection of its citizens outside its borders (Art. 3(5) TEU)⁸. Despite the innovations introduced by the Lisbon Treaty aimed at ensuring the uniform interpretation of Union law and effectiveness of its newly introduced objective of protecting the Union citizens in the

certain of the bilateral agreements concluded by certain of the EU countries after their accession to the European Union or after the entry into force of the Maastricht Treaty provide a list of consular functions wider than the one established by Art. 5(1) of Decision 95/553/EC. Thus, it raises the question whether the principle of non-discrimination laid down in Art. 23 TFEU should also apply in order to ensure the same consular functions exercised under these regional and bilateral agreements for other unrepresented EU nationals who are not nationals of the Contracting Parties.

⁷ Pierre Pescatore argues that the Decisions of the representatives of the governments of the Member States are Union acts and thus subject to full judicial review. According to the author they can also be subject to the action of annulment even though this judicial procedure can only be brought against Union acts, which these decisions are not. The argument put forward by the author is that being acts adopted in the framework of the Council, the latter is not entirely unaware of the adoption of these measures, furthermore, the measures must have the informal approval of the Council, since the Member States are using the Council institutional setting and thus the Council should bear responsibility for these actions, and not avail itself of the institutional veil in order to escape judicial responsibility. See P. Pescatore, *Études de droit communautaire européen 1962-2007: Avec une liste bibliographique complémentaire*, Bruylant, 2008. This research supports this interpretation, which even though it is in a minority, seems to gain more academic support, see also T. Hartley, *The Foundations of European Union Law*, 7th edition, Oxford University Press, 2010, p. 94.

⁸ Art. 3(5) TEU provides for the express objective of the Union to provide individual international protection for its citizens. In addition, Art. 21(2)(g) TEU provides the external objective of the Union to ensure the collective protection of the Union citizens in situations of distress, while being outside of the Union’s borders.

world, the Section highlights briefly how the heterogeneous domestic rules on whether consular protection is or whether it is not a right under national law, on its material and personal scope and the fact that in certain national jurisdictions there is a lack of national means for the judicial review of the acts of the consular and diplomatic officials as regards consular and diplomatic protection are all likely to hamper the Union's proposed objectives.

Chapter 2 collects the national Reports, one for each EU Member State, putting forward the existing national legal framework on consular protection/assistance. The national Reports were drafted by national experts identified for the CARE project and they mainly deal with the following issues: (i) legal basis of consular protection (international law, EU law, national law); (ii) fulfilment of Union obligations by the Member States under Art. 23 TFEU and statistical data on consular practice; (iii) consular protection in detail (relating to several specific distress situations, on the basis of cases described by Decision 95/553/EC); (iv) emergency travel documents; (v) other consular functions (consular functions for expats). A further relevant factor for consular protection aside from the typically "national topics" was addressed in Section 4.1 in each of the national Reports, namely the topic of whether family members who are third countries nationals and foreigners with residence permits are included or not among the beneficiaries of consular protection. Almost all EU countries provided statistical data on cases of consular protection provided by them to their own citizen (and, in some cases, to other EU citizens). Although the main issue dealt with by the Reports is consular protection, essential information is also provided on diplomatic protection. The country correspondents have followed a single template when drafting the national Reports, however the level of details given by the national Reports on their relevant domestic legislation and practice differs, sometimes considerably. This is due to several reasons such as: the different level of access to the relevant information, the different levels of openness of public officials working in the area of consular affairs and the different degree to which the national legislation covers the field of consular protection and assistance.

Chapter 3 puts forward a comparative analysis of the legislation and practice on consular protection and assistance of the 27 EU countries, based on the national Reports and on the legal documents included in the [CARE database](#). The Chapter follows the structure of the national Reports and in each Section an overview of the similarities and discrepancies between the legislation and practice of the EU countries is given. To facilitate easier access to the relevant information from the national Reports, [hypertext index tables](#) with direct links to the national Reports are included. In regard to the most important issues on consular protection and those where most differences exist between the legislation of the EU countries, [tables](#) are included which summarise the information collected from the national Reports.

According to the information provided by the national Reports, it seems that the Member States provide consular protection in a varied and sometimes, unfortunately, discretionary manner. The different approaches of the Member States are, *inter alia*, related to whether consular protection is or whether it is not a right, the level of discretion left to the Member States in deciding when, to whom and to which level to afford consular protection, the legal force of the provision interpreted as providing a right to consular protection, the different nature of legal remedies, if any, against a refusal of a consular or diplomatic official to provide assistance, and whether consular protection and assistance are different concepts.

Chapter 4 presents conclusions and recommendations as final results of the analysis carried out in the previous chapters. It deals with (i) the EU law framework, focusing on the content of the right enshrined in Arts. 20(2)(c) and 23 TFEU and on the EU competences; (ii) legislation and practice on consular protection of the EU countries, presenting an unsatisfactory scenario regarding the full implementation and judicial guarantees of Art. 23 TFEU; (iii) actions that can be taken by the Member States independently of the adoption of Union legislative measures and, finally, (iv) the initiatives that can be carried out by the EU institutions for harmonising the field of consular and diplomatic protection of Union citizens. The comparative analysis proposed by this Report emphasises the need to adopt a Union legal measure, collecting the norms regulating the field of consular and diplomatic protection in one instrument, an instrument that, in addition to the legal certainty and transparency, will provide for the necessary judicial guarantees of the Union citizens' right to consular and diplomatic protection. This measure is finally possible on the basis of Art. 23(2) TFEU, probably being the only measure able to clarify the confusion surrounding the EU norms on consular protection. In a similar vein, the Chapter also specifically highlights some actions strongly recommended for inclusion in the future Council Directive.

Chapter One: Introduction

1. The CARE project background

1. The Green Paper "Diplomatic and consular protection of Union citizens in third countries" presented by the Commission in 2006 focuses on the right established in Article 23 of the Treaty on the Functioning of the European Union [ex-Article 20 of the EC Treaty]. Under this Article, if a citizen of the Union is in a third country in which the Member State of which he/she is a national does not have an embassy, a consular post, or a honorary consul, he/she is entitled to protection by the diplomatic and consular authorities of any of the other Member States that are represented on the spot, on the same conditions as the nationals of that State.

In this document, the Commission sets out ideas to be considered for strengthening this Union right, pointing out that European citizens are not fully aware of this right which anyhow results far from being fully implemented by the Member States.

With the publication of the Green Paper, the Commission launched a wide public consultation on this issue. The response to the Green Paper revealed a significant interest in this matter. A public hearing was held on 29 May 2007. Civil society, other European institutions and individual respondents argued for more impetus to be given to the now Article 23 TFEU as a tangible expression of Union citizenship. In the Action Plan 2007-2009 "Effective consular protection in third countries: the contribution of the European Union" (doc. COM(2007)767), the Commission states that:

"It emerged during the public consultation that the extent of consular protection varies between Member States. Discrepancies may deprive Article 20 TEC [now Article 23 TFEU] of its full effect. The Commission will examine the Member States' legislations and practices on consular protection and assess the extent and nature of these discrepancies."

2. The CARE (**Citizens Consular Assistance Regulation in Europe**) project aims at bringing a contribution to this examination, providing a clear and complete framework of the legal regulation established in each of the 27 Member States of the European Union regarding diplomatic and consular protection of European Union's nationals in third countries.

The availability of such a clear and complete framework relating to national situations falling under this domain is a necessary tool for ensuring the full enjoyment of the right stated in Article 23 TFEU (as well as by Article 46 of the European Charter of Fundamental Rights) by the Union citizens.

At the basis of Article 23 TFEU sits the equal treatment principle, as it is expressly stated: *"Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State."*

The possibility of having at its disposal this type of information will allow the Commission to efficiently develop the necessary actions to be adopted and carried out within the field of consular and diplomatic protection of Union citizens.

Furthermore, the research carried out under the CARE Project and its results will enable all EU citizens to know exactly under which conditions and according to which rules the diplomatic and/or consular delegations belonging to other EU countries are obliged to intervene for protecting them in a foreign country where their own EU countries are not represented with a delegation. Union citizens must have fast and easy access to clear, transparent information on every type of assistance they can expect to receive from the consular and diplomatic authorities of each of the 27 Member States.

Specifically, as final results, the project aims at providing:

- a comparative Report analysing the legal framework of the 27 EU countries, focusing on all issues related to consular and diplomatic protection in third countries taking into consideration legislation, case-law, and also, if any, policies and national action plans;
- a database collecting relevant legal materials on diplomatic and consular protection adopted in each of the EU countries. Various types of documents have been collected: legislation, case law, administrative directives and guidelines, and also other informative materials made available by the national Governments for their citizens. The database contains full text documents in their original language, enriched by a metadata set, i.e., information about the documents. Metadata are translated into English and French. Texts of the most relevant documents are also translated into English and French. In addition the database contains relevant international multilateral conventions, European Union documents, relevant jurisprudence of the EU Courts and the European Court of Human Rights;
- a multilingual website facilitating access via the web to the database. The web site may be accessed freely by all EU citizens.

3. Regarding the national Reports, in order to accomplish this task, Country Correspondents (CCs) have been identified. They are experts in public law, international law and/or EU law [see [Annex II](#)]. Following a standard template, provided by the staff of the CARE project, they have produced their national Reports.

CCs initially drafted a preliminary version of their national reports. According to the evaluation of these Reports and feedback received also by the European Commission, some adjustments and integrations were required from the CCs. Further support in defining the relevant issues to be considered by the CCs derived directly from experts participating at the three workshops organised under the CARE project by different partners [see [Annex I](#)].

4. The CARE project is coordinated by Ittig-CNR (*Istituto di Teoria e Tecniche dell'Informazione Giuridica* - Institute of Legal Information Theory and Techniques of the National Research Council of Italy). The two Partners of the project involved in the implementation of this Report are IISA - *Istituto Italiano di Scienze Amministrative* (Italian Institute of Administrative Sciences) and the University of Vienna which have been coordinating the CCs in drafting their national Reports.

5. The Report was edited by **Sebastiano Faro** and **Madalina Bianca Moraru**.

Section 2 of **Chapter 1** was drafted by **Erich Schweighofer**.

Section 3 of **Chapter 1** was drafted by **Mario P. Chiti** with the contribution of **Madalina Bianca Moraru**.

Chapter 3 was drafted by **Sebastiano Faro** and **Madalina Bianca Moraru**.

Chapter 4 was drafted by **Mario P. Chiti**, **Sebastiano Faro**, **Madalina Bianca Moraru** and **Erich Schweighofer**.

Maria Angela Biasiotti and **Ginevra Peruginelli** translated some parts of the text originally written in Italian and French into English.

2. Consular protection: International law framework

1. Consular treaties and arrangements

Consular protection is one of the most ancient activities in international relations. Consuls are officials of their State protecting and supporting nationals in another State. The consular institution has gone through many phases of development. Starting already as an instrument between the Greek city States, this institution got its first height in the middle age, in particular between Italian city States. The agreements with the Ottomans introduced capitulations, e.g., a full jurisdiction of the consuls over their compatriots in connection with civil, criminal and commercial matters. This system was later extended to many States as an instrument of imperialism. As such, considered unequal, it was abolished until the middle of the 20th century.

Present practice was established by practice and many bilateral agreements regulating the establishment of a consular post, the appointment of consular staff, consular functions, privileges and immunities of consular posts etc. With the Vienna Convention on Consular Relations (VCCR), this practice was progressively codified. Since then, the VCCR got nearly universal recognition.¹

Contrary to its practical relevance, not much documentation or literature on consular protection and assistance exists.² Much more interest exists for the topic of diplomatic protection³.

European law, in particular Art. 23 TFEU and Art. 46 of the European Union Charter of Fundamental Rights, limits the scope of our analysis.⁴ From the many consular issues, only those on the exercise of consular functions of any EU Member State for EU citizens (Art. 23 TFEU) on their requests according to Decision 95/553/EC⁵ and

¹ Lee, Luke T. and Quigley, John, *Consular Law and Practice*, Oxford University Press, USA; 3rd edition, 2008, p. 3 et seq.

² See the following reference books: Brownlie, Ian, *Principles of Public International Law*, 8th edition, Oxford University Press 2008, p. 349 et seq.; Dinh, Nguyen Quoc, Daillier, Patrick, Pellet, Alain, *Droit international public*, 4e edition, LGDJ, Paris 1992, p. 646 et seq.; Economidès, Constantin, *Consular Relations*, in: Bernhardt, R. (ed.), *Encyclopedia of Public International Law*, Volume I, North-Holland, Amsterdam, 1992, p. 765-768; Economidès, Constantin, *Consular Treaties*, ibid., p. 768-770; Economidès, Constantin, *Consuls*, ibid., pp. 770-776; Köck, Heribert Franz, *Die Organe des völkerrechtlichen Verkehrs*, in: Neuhold, Hanspeter et al., *Österreichisches Handbuch des Völkerrechts*, Band 1, 4. Aufl., Wien 2004, p. 324 et seq., recent monographs on consular protection: Lee, Luke T. and Quigley, John, *Consular Law and Practice*, Oxford University Press, USA; 3rd edition, 2008; Quigley, John, Aceves, William J., and Shank, Adele, *The Law of Consular Access: A Documentary Guide*, Routledge Research in International Law, kindle editions, T & F Books UK, 2009; Wojda, Alexander, *Das österreichische Konsularrecht*, Manz, Wien 1998.

³ Recent monographs on diplomatic protection: Vermeer-Künzli, Annemarieke, *The Protection of Individuals by means of Diplomatic Protection*, Ph.D. thesis, University of Leiden, 2007; Amerasinghe, Chittharanjan F., *Diplomatic Protection*, Oxford Monographs in International Law, Oxford University Press 2008; Eileen Denza, *Diplomatic law: commentary on the Vienna Convention on Diplomatic Relations*, 3rd edition, Oxford University Press, 2008.

⁴ Cf. Kluth, Winfried, Art. 20 EGV, in: Calliess, Christian and Ruffert Matthias (Hrsg.), *EUV/EGV, Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtecharta, Kommentar*. Beck, München 2007; Magiera, Art. 20 EGV, in: Streinz, Rudolf (Hrsg.), *EUV/EGV, Kommentar: Vertrag über die Europäische Union und Vertrag zur Gründung der europäischen Gemeinschaft*, Beck'sche Kurzkommentare, München 2003.

⁵ Decision 95/553/EC of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations.

Decision 96/409/CSFP⁶ are dealt here. Thus, the functions of consular assistance are in particular: (a) assistance in cases of death; (b) assistance in cases of serious accident or serious illness; (c) assistance in cases of arrest or detention; (d) assistance to victims of violent crime; (e) the relief and repatriation of distressed citizens; and (f) issuance of emergency travel documents (ETD). Other assistance is limited to powers of the representation. Support should be provided under the same conditions as for the nationals, e.g., determined by international treaties, customary international law, the relevant national law and, last but not least, the law of the receiving State. Relevant but not an explicitly mentioned support is the exercise of official functions in accordance with international agreements and practice and the laws of receiving State. Further, according to the Green Paper *Diplomatic and consular protection of Union citizens in third countries* [COM (2006) 712], the personal scope should be extended to Union citizens' family members.

The other activities of consuls are not within the scope of this study: passport and visas, refugees, marriage and divorce, extradition and civil procedure, child abduction, other notarial functions, international, cultural, scientific and tourist functions, shipping and aviation, promotion and protection of trade etc. Some of these functions, in particular visas, are already determined by EU law.

Art. 23 TFEU provides also a right to diplomatic protection. However, diplomatic protection is not mentioned in the implementing documents and seems to be at a very early stage of development.

The praxis of appointment of consular staff or privileges and immunities of consular posts is also not dealt here. It is also too early to assess the coming development of the newly established European External Action Service that may handle also consular assistance in the near future.

However, for the moment, according to the Council Decision 2010/427 establishing the organisation and functioning of the European External Action Service, Art. 5 (10): "*The Union delegations shall, acting in accordance with the third paragraph of Article 35 TEU, and upon request by Member States, support the Member States in their diplomatic relations and in their role of providing consular protection to citizens of the Union in third countries on a resource-neutral basis.*"⁷

2. Universal and European frameworks

The most important international agreement in respect to consular relations, assistance and cooperation is the Vienna Convention on Consular Relations, Vienna, 24 April 1963 [hereinafter: VCCR]. It entered into force in accordance with Article 77, on 19 March 1967. As of 16 June 2010, 172 States are parties to this Convention.⁸ The Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes entered into force on 19 March 1967. As of 16 June 2010, 48 States are parties to this Convention⁹. The Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality entered into force on 19 March 1967. As of 16 June 2010, 39 States are parties to this Convention.¹⁰

⁶ Decision 96/409/CSFP of the Representatives of the Governments of the Member States, meeting within the Council of 25 June 1996 on the establishment of an emergency travel document

⁷ Council Decision adopted on 26 July 2010, OJ L201/30.

⁸ http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-6&chapter=3&lang=en.

⁹ http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-8&chapter=3&lang=en.

¹⁰ http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-7&chapter=3&lang=en.

The European Convention on Consular Functions (ETS 061), Paris, 11 December 1967, has not yet entered into force. As of 16 June 2010, only 4 States have ratified the Convention, e.g., the threshold of 5 ratifications for the entry into force has not yet been reached. The Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 080) entered into force on 11 November 1975. As of 16 June 2010, 22 States are parties to this Convention. The European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers entered into force on 14 August 1970. As of 16 June 2010, 20 States are parties to this Convention.

Until the entry into force of the VCCR, the former “Socialist States” have established extensive treaty networks on consular relations. These treaties have been taken over by the new governments without problems. Practical relevance is minor as these treaties repeat mostly the provisions of the VCCR.

Concluding, the VCCR can be considered as a largely accepted treaty practice reflecting now customary international law (subject to persistent objectors to some provisions). From the other relevant treaties, only the Agreement on the Transfer of Corpses got some prominence. The European Convention on Consular Functions has never entered into force. The extensive practice of the “Socialist States” has contributed to the acceptance of the principles of the VCCR and has lost its significance due to the acceptance of the VCCR by these countries. Art. 73 para. 1 of the VCCR recognizes the validity of existing consular agreements; Art. 73 para. 2 permits the option of supplementing the VCCR by other agreements.

The universal and European frameworks leave some questions open. In the context of Article 23 TFEU, the following issues should be mentioned:

Article 8 VCCR is very open to taking-over of consular functions by third States, however, subject to the agreement of the receiving State. Third States could refuse this exercise of consular functions of EU Member States for other EU citizens. Thus, Member States (and/or EU) should negotiate agreements containing the exercise of consular functions of any EU Member State for EU citizens as well as co-location arrangements, lead State etc.

The functions of the consul are only loosely described in the VCCR. Article 5 VCCR gives only a typology without definitions and constraints and referring to the law of the receiving State. European consular assistance law contains a more substantive list of consular assistance. Thus, Member States (and/or EU) should negotiate agreements containing the exercise of consular functions as described in EU instruments. In particular, two functions should be mentioned: first, the VCCR does not cover the quite extensive functions required for evacuation operations in catastrophes, second, consular assistance for expats is also not fully covered, in particular concerning participation in elections but also for more and more important e-government (and e-democracy) functions.

Art. 23 TFEU provides that Member States should negotiate the required international arrangements. Member States have not complied with this obligation. In 1993, the extension under Art. 23 TFEU (then Art. 20 TEC) of the exercise of consular and diplomatic protection by the Union Member States to citizens of other Member States that are not represented in the third country where their citizens are located was notified to third countries by way of a general note¹¹; later on as it results from the national Reports, third countries were notified about Art. 23 TFEU practice on a case-by-case

¹¹ Decision of 241st Political Committee 29-30 March 1993 “Guidelines for the Protection of Unrepresented EC Nationals by EC Missions in Third Countries”, in force since 1 July 1993 was notified to third States by the then Presidency with a verbal note in 1993.

basis, usually by informal practice. Third States seem to have accepted the practice, however, they are under no obligation to continue accepting the practice, as Art. 8 VCCR gives the receiving State discretion, as long as there is no formal agreement concluded, which contains the consent of the receiving non-EU country on the exercise of consular functions by the EU countries according to Art. 23 TFEU.

3. Regional frameworks

Within the European Union, only two regional frameworks exist dealing with consular protection: the **Scandinavian Convention** and the **Baltic Convention**. These agreements involve in regard to the first Convention the five Scandinavian States and in regard to the latter Convention, the three Baltic States. Each of these agreements handles in their own way firstly, the consular relations between the contracting countries and secondly, the relationship between the contracting States with their citizens and with the other States' citizens. Before going into further details, as a first observation, it is interesting to notice that both agreements are similar to a certain extent but at the same time they are also quite heterogeneous. Moreover, it is important to observe the regional characteristic of these agreements, namely that both agreements were concluded by northern and respectively even more northern countries of the European Union, having a long-standing regional co-operation relation among themselves.

Outside the European Union, Portugal has taken the initiative of negotiating an Agreement on consular cooperation between the members of the Portuguese Speaking Countries Community (CPLP) (*Acordo de Cooperação Consular entre os Estados membros da Comunidade dos Países de Língua Portuguesa*), signed in Lisbon on 24 July 2008. The framework of co-operation is similar to that of Art. 23 TFEU and Decision 95/553/EC. So far, the agreement has not yet entered into force.

3.1. Scandinavian Cooperation

On 23 March 1962 in Helsinki, the five Scandinavian countries – the now EU Member States Denmark, Sweden and Finland and the now EEA Member States Iceland and Norway – signed a Treaty of Cooperation, the so-called Helsinki Treaty. The main object of this treaty is to promote and strengthen the already existing close ties between the Nordic people. Consular assistance constitutes only a small part of this treaty framework.

3.2. Baltic Cooperation

On 5 February 1999 in Vilnius, the three Baltic States of Estonia, Latvia and Lithuania, now Member States of the European Union, have signed the Agreement on Consular Assistance and Cooperation. The reason for the agreement was the desire to promote consular cooperation between them due to earlier developments on the field of consular co-operation within the framework of the Baltic Committee of Ministers. The Baltic Agreement entered into force on 23 September 1999 (therefore before the Contracting Parties accession to the European Union).

3.3. Object and Purpose

Out of the preambles of both agreements it is possible to conclude already some key points.

The Scandinavian cooperation has a quite broad scope and involves several areas. Legal,¹² cultural, social and economic cooperation are also covered so as co-operation in transport and communication issues, and one in the area of environmental protection. Consular and/or diplomatic cooperation are only mentioned in Article 34 of the Helsinki Treaty. It is obvious that strong co-operation practice between the Nordic countries plays a strong role in the implementation of Article 34 of the Helsinki Treaty.

The Baltic cooperation is dedicated entirely to issues of consular assistance. Therefore, the Baltic Treaty handles the various issues in more detail than the Helsinki Treaty; it follows a quite casuistic approach. Art. 3 of the Baltic Agreement reiterates the cases set out in Art. 5(1) of Decision 95/553/EC and adds a new consular function in Art. 3(g) – *[the consular and diplomatic officials of the Contracting Parties] acting as notary in capacities and performing certain functions of an administrative nature, in conformity with the laws and regulations of the receiving State*. The Treaty contains definitions for the assisting¹³ as well as the assisted State¹⁴ and the scope of consular assistance. The Baltic Treaty also sets out general principles.

Both Treaties contain two leading principles of consular assistance. (i) Contracting Parties shall assist citizens of any of the other Contracting Parties to the agreement should this Party not be represented in the receiving State.¹⁵ (ii) The second principle was established by the Vienna Convention¹⁶ and states that assistance can only be granted if the receiving State¹⁷ does not object to this assistance. Although both agreements involve such wording, only the Baltic Treaty refers to the VCCR as the Helsinki Treaty was established before the VCCR was concluded.

3.4. Definition of consular functions

The Helsinki Treaty as well as the Baltic Treaty do not contain definitions of consular functions. Both the Baltic and the Helsinki Treaties provide for a right to consular assistance as long as that *“assistance should be provided in conformity with the rules and regulations in force both in assisting State and in assisted State.”* (Article 2 para. 2 of the Baltic Treaty) and as long as that assistance is only granted *“to the extent that it is compatible with their [the missions] duties”* (Art. 34 of the Helsinki Treaty).

It can be observed that the Baltic Treaty refers to the consular law in force, which means that assistance is only provided according to equivalent practice in the relevant

¹² Especially the equal treatment of all citizen of all Nordic countries in Article 2 and regulations regarding the acquisition of citizenship in Article 3 of the Helsinki Treaty.

¹³ Article 1 para. 1 states that *“[t]he assisting State” means the Contracting Party whose permanent diplomatic mission or consular post provides the consular protection for the citizens of the other Contracting Party in third countries.*

¹⁴ Article 1 para. 2 states that *“[t]he assisted State” means the Contracting Party whose citizens may seek the consular protection in the third countries from the permanent diplomatic mission or consular post of an assisting State.*

¹⁵ See the Helsinki Treaty stating that *‘Public Officials in the Foreign Services of any of the High Contracting Parties who are serving outside the Nordic countries shall [...] also be of assistance to citizens of the other Nordic countries, should the latter not be represented in the territory concerned.’* Furthermore, the Baltic Agreement stating that *‘[a] Citizen of the assisted State in need of consular protection in States where the assisted State has no permanent diplomatic mission or consular post, may seek the consular assistance from the permanent diplomatic mission or consular post of the assisting State.’*

¹⁶ See Article 8 Vienna Convention on Consular Relations stating that *‘[u]pon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State.’*

¹⁷ The receiving State is the State in which a person is in distress and refers to the mission whose citizenship he/she does not possess.

States. In case of disagreement, this part of consular assistance seems not be covered by the Baltic Treaty.

The Helsinki Treaty has a similar compatibility provision: compatibility with the duties of the States' missions. Among the Scandinavian countries, only Finland has a consular law. In Sweden and Denmark, practice is slightly developing into a right to consular assistance¹⁸, however, discretion of consular officers still plays a major role. The reference to mission duties has to be interpreted that national practice of missions (e.g., laws, internal rules etc.) determines the right to assistance of nationals of other Nordic countries¹⁹.

3.5. Scope of personal application

Obviously, the scope of personal application comprises nationals of the Contracting Parties. However, since many persons have a right to residence in the Scandinavian and Baltic countries, aside the nationals of these countries, rules and practice seem to develop into a more or less explicit coverage of these persons too.

The Baltic Treaty provides that consular assistance is granted to “*citizens of the assisted State [...]*”.²⁰ Article 4 of the Baltic Treaty determines the evidence that the individuals who request assistance have to provide in order to prove their citizenship to one of the Contracting Parties:

“1. Consular officer of the assisting State may take measures to clarify whether the applicant is a citizen of the assisted State.

2. Such measures include:

a) asking the applicant to submit a valid citizen's passport;

b) asking the applicant to submit any other certificate of citizenship;

c) in case of doubt the consular officer of the assisting State should refer to the Ministry of Foreign Affairs or the nearest diplomatic mission of the assisted State for confirmation of applicant's citizenship.

d) any other means that does not contradict the international law and internal law of the Contracting Parties.”

It has to be emphasized that the concept of “citizen” is broader than nationality in Baltic States due to the high number of persons with a right to residence without being a national (e.g., Russians).

The Helsinki Treaty does not provide a procedural rule equivalent to the one laid down in the Baltic Treaty and this is probably due to the fact that the Nordic States have a clearer definition of citizenship provided in their domestic legislation and secondly they do not share the troubled historic legacy of the Baltic States as regards the Russian residents. The Helsinki Treaty states only that “*public officials [...] shall also be of assistance to citizens of the other Nordic countries.*”

¹⁸ Only the Finnish Report clearly states that there is a legal right to consular assistance, based on the Finnish Consular Service Act; the Reports on Sweden and Denmark do not mention an explicit right to consular protection and assistance, accordingly, in Sweden, citizens are entitled to disaster aid and the State is seen as last resort help based on the interpretation of the Swedish Law on Economic Aid and in Denmark there is a similar provision related to economic concerns.

¹⁹ Having in mind the national provisions on consular assistance of the Contracting Parties, the consular functions provided under the Helsinki Agreement can be wider than under Art. 5 of Decision 95/553/EC.

²⁰ See Article 3 Baltic Agreement.

3.5.1. Permanent Residents

The Baltic countries provide consular assistance to permanent residents in a similar way as to nationals. The Lithuanian Report states that “[c]onsular assistance is provided for [...] [s]tateless persons legally being in a foreign State in possession of a permit for permanent residence in the Republic of Lithuania [...].” Latvia extends the assistance also to all passport holders issued by Latvia. Estonia gives limited consular protection to non-citizens who live in Estonia on the basis of a residence permit or right of residence and to whom an Estonian alien’s passport²¹ has been issued.²²

All three Scandinavian countries provide consular assistance to permanent residents. The Finnish Report states that protection and assistance is granted to “*foreigners residing permanently in Finland, who is in possession of, or has been granted a permit to reside or work in Finland either permanently or in a comparable manner*”. Sweden on the other hand extends its protection simply to foreigners living in Sweden without any further requirements.²³ A similar practice exists in Denmark. Danish consular missions provide assistance not only to nationals but also to aliens permanently residing in Denmark. Moreover, the Danish Report states that further protection and assistance is provided to aliens permanently residing in the other Nordic countries. Such an extension is not mentioned in the other Reports.

3.5.2. Family Members

The Baltic Treaty does not include any provision in regard to family members of a Baltic citizen who is not in possession of Baltic or EU citizenship. Formally, family members do not have a right to consular assistance. Extensions exist, however, but only in crisis situations in connection with evacuations (as explicitly stated in the Lithuanian and Estonian Reports).

The Helsinki Treaty does not handle the question of family members. The issue is dealt in the national legislation and practice of the EU countries parties to the Treaty. The Swedish Report mentions that assistance is provided, in general, to family members who are not citizens of Sweden²⁴.

3.6. Notification of third States

National Reports do not mention a special notification of these consular assistance frameworks. It seems that third States are usually informed by the exercise of the practice on a case-by-case basis.

²¹ According to the Identity Documents Act.

²² Estonian Consular Act, Section 1(2); as a rule, such aliens are stateless persons permanently living in Estonia, but under exceptional circumstances an alien’s passport may be issued also to a foreigner; however, this does not automatically indicate that an alien’s passport grants the holder the right to consular assistance; see in this respect especially the Estonian Identity Documents Act, Section 26(2).

²³ At least according to the Swedish Report.

²⁴ However, according to the Swedish Law of 1 August 2010 on Consular Disaster Response, assistance is provided to citizens of Denmark, Finland, Iceland and Norway, and their family members as well as to the family members of Swedish nationals. The Law seems to not extend the type of consular assistance provided under it to family members of all Union citizens, despite the aforementioned general approach. The national Report does not clarify this contentious point. As regards Denmark, the national Report provides that general assistance to family members who are not nationals of an EU country is excluded. However, if assistance is granted, it is subject to the consent of the home State of the Union citizen. There are exceptions, in cases of evacuations, when consular assistance is granted by Denmark to non-EU family members, without the prior consent of the Union Member State.

4. Bilateral treaties and arrangements

Besides the VCCR, the Helsinki Treaty and the Baltic Treaty, the vast majority of consular cooperation is established on a bilateral basis. Such treaties should cover two main issues: firstly, the Contracting Parties agree to give consular assistance to the nationals of the other State and, secondly, a non-EU State agrees to the exercise of consular functions by an EU country on behalf of another EU country. In practice, treaties do not contain the second part and rely on the relevant rule in the VCCR.

Sharing of the burden of consular assistance and co-location are other main topics of the arrangements on improving consular assistance. Due to the focus of this study on consular assistance, treaties on assistance for visa or asylum affairs are not included in this analysis.

Consular assistance to citizens of other State(s): The Contracting Parties shall assist citizens of the other Contracting Party to the agreement if this Party is not represented in the receiving State.

The principle of agreement of the receiving State is contained in Article 8 of the VCCR stating that “[u]pon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State.” Practice of Article 8 of the VCCR seems to be pragmatic. The UK Report states that so far, the receiving States did not object to the exercise of consular functions on behalf of a third State.²⁵ However, cases may always appear where a receiving State will change its approach and not agree anymore on such practice. Article 8 of the VCCR gives full discretion to the receiving State that may be used in cases of, for example, an inter-States conflict. Further, States with national consular laws and now also the European Union with a developing right to consular assistance may face implementation deficiencies if the receiving State does not cooperate. Thus, the conclusion of bilateral treaties seems to be still advisable and necessary.

Co-location of diplomatic or consular facilities: States agree on a framework for sharing common facilities, e.g., offices, personnel, infrastructure etc. in the receiving State. The exercise of the consular function is not transferred.

5. Overview on selected bilateral treaties

5.1. “Old treaties” before the VCCR

Before the VCCR, a sort of uniform practice was though settled which is evidenced by the existence of a large number of bilateral treaties. The Vienna Convention on Consular Relations constitutes a progressive development in privileges and immunities. These treaties are not affected by the Vienna Convention on Consular Relations; however, their practical relevance is now minor due to a material derogation brought by the later Convention. Capitulation treaties providing for consular jurisdiction have been abolished as they are considered as unequal by the receiving States.

²⁵ See in this regards the UK Report: “I am not aware of any occasions where in practice such objections have been raised, either in relation to representation by one EU Member State of citizens of another, or in relation to other similar arrangements such as the long-standing informal arrangement whereby British missions provide consular assistance to unrepresented Commonwealth nationals, or the arrangements for mutual assistance between Scandinavian countries.” Extract from declaration made by Sir John Murphy, Minister for Europe at the Foreign and Commonwealth Office, Select Committee on European Scrutiny - Twenty-Sixth Report, at col. 5.10.

5.2. “Socialist consular treaties”

Due to the somehow developing consular law, socialist States concluded many consular treaties in the 1950ies and 1960ies. Structure and content of these treaties are similar to the VCCR. Formally speaking, these treaties remain in force but they are materially derogated by the Vienna Convention.

5.3. “New treaties”

The necessity for consular treaties has greatly diminished since the entry into force of the VCCR. For EU Member States, the need for consular treaties diminished further with entry into force of the Treaty of Maastricht providing an obligation for consular assistance to EU citizens.

5.3.1. Austria/Hungary: Consular assistance

The Agreement between the Federal Minister for Foreign Affairs of the Republic of Austria and the Foreign Minister of the Republic of Hungary on cooperation of foreign representatives entered into force on 20 December 2005, therefore it is an agreement concluded between two Member States²⁶. The Agreement establishes the principle of co-operation between the diplomatic and consular representations of both countries within the framework of international law and the laws of the receiving State. In countries where one State is not represented, the other State can exercise these functions. The scope has to be decided on a case-by-case basis between both States. Therefore, the material scope of consular protection provided under the Agreement can be broader than under Art. 5 of Decision 95/553/EC aimed at implementing former Art. 20 EC Treaty. All activities have to be reported to the other State. Further, co-location arrangements are envisaged. In case of catastrophes, both States will exchange information and co-operate in order to give support.

The Austro-Hungarian Agreement provides for special cooperation in crisis situations (Article 5), such as natural disasters and armed conflicts that shall include an exchange of information on experience gained in crisis situations, a coordination of planned projects, a concerted action in crisis situations; and assistance for citizens of both countries.

The agreement establishes a framework regime that can be easily modified²⁷. Both parties can depart from its provisions by mutual consent²⁸.

5.3.2. Luxembourg/Belgium: Consular assistance

Luxembourg as a small State has delegated consular assistance to Belgium and diplomatic representation to the Netherlands. The Convention on consular cooperation between the Grand-Duchy of Luxembourg and the Kingdom of Belgium of 30 September 1965²⁹ codifies the long history of consular cooperation. The Convention

²⁶ On 20 December 2005, both Austria and Hungary were parties to the European Union.

²⁷ See Article 6 para 2 of the Agreement.

²⁸ In addition to the Agreement between the MFAs of Austria and Hungary on cooperation of foreign representations of the two countries, there is a more specific agreement on consular cooperation concluded between the two countries: the Agreement between the Austrian Minister of Foreign Affairs and the Hungarian Minister of Foreign Affairs concerning the common location of the offices of the embassy of Austria in Serbia and Montenegro and of the embassy of Hungary in Serbia and Montenegro in Podgorica.

²⁹ *Convention entre le Grand-Duché de Luxembourg et le Royaume de Belgique relative à la coopération dans le domaine consulaire du 30 septembre 1965 (Mémorial A n° 51, 21 September 1966, p. 954-957).*

was concluded after the establishment of the EEC, however long before the entry into force of the Maastricht Treaty. The cases of consular assistance given by the Belgian consular and diplomatic officials on behalf of Luxembourg are wider than those provided under Art. 5 of Decision 95/553/EC³⁰. It is sufficient that Luxembourg has no representation in a certain region (not a State) to activate the duty. Further, consular assistance is also granted in case of vacation or temporary vacancy. The list of functions is very broad and covers all consular functions.

5.3.3. Austria/Switzerland: Consular assistance

The Austro-Swiss Agreement on cooperation in consular matters was concluded on 3 September 1979 and entered into force on 1 January 1980. The agreement handles only issues of consular assistance. Consular protection and assistance is provided to nationals of the other State in third States in which one of the two States does not have any representation. The details, e.g., which countries, which tasks and the geographical boundaries have to be determined mutually by an exchange of notes. The receiving State has to be notified. The scope of assistance is limited to regulations and practice in the assisting State. It should be provided to the same extent and under the same conditions as the consular assistance provided to the own citizens.

Article 4 gives a list of consular functions:

“Consular functions under Article 1 are, in particular:

- 1. to protect the interests of nationals of the other State, in accordance with Article 5;*
- 2. to grant consular protection in case of restriction of individual freedom and freedom of movement;*
- 3. to provide support and assistance in the case of unintended distress, sickness, accident, death as well as in situations of war or crisis, riots and natural disasters given the means available;*
- 4. to initiate investigations for missing or absent persons;*
- 5. to establish, if necessary, the contact between the nationals of the other State and their nearest representation or the Ministry of Foreign Affairs of their country, as well as to transmit papers and documents;*
- 6. to notarize signatures and seals, in accordance with Article 9;*
- 7. to issue receipts, in accordance with Article 10;”*

It can be observed that the consular functions list is wider than Art. 5(1) of Decision 95/553/EC list.

Consular posts may provide repayable loans for citizens in distress. The State of the assisted person reimburses the loan and takes care of recovery. Both States will include the nationals of the other State in a crisis situation. Both States collect fees according to the corresponding Consular Fees Act.

³⁰ Arts. 2-9 set out a long list of situations where the consular and diplomatic officials of Luxembourg provide consular assistance to the citizens of Belgium, e.g., registration of the Belgian citizens, notarial services, representation and help before the administrative authorities from the receiving State. Therefore the Agreement concludes the consular functions provided in Art. 5 of the Vienna Convention on consular relations which are considerably wider than the consular functions provided in Art. 5(1) of Decision 95/553/EC.

5.3.4. Czech Republic/Slovakia: Consular assistance

The Understanding between the Ministry of Foreign Affairs of the Czech Republic and the Ministry of Foreign Affairs of the Slovak Republic on Cooperation in Matters of Consular Services was signed on 4 February 1993 and entered into force the same day, therefore it is an agreement dating before the Parties accession to the Union. It deals only with consular matters in cases of accidents, emergency and distress in third States where one of the Parties is not represented. Consequently, the Agreement does not go further than the cases mentioned in Art. 5 of Decision 95/553/EC.

Article 3 states a leading principle that the standard of assistance to nationals abroad should be maintained after the end of the Czech and Slovak Federation for citizens of the other State.

Not all costs for consular assistance have to be reimbursed; only reasonable costs have to be reimbursed.

The main goal of this Agreement is to carry on the consular assistance formerly conducted by the (former) Federal Czechoslovak Republic.³¹ Thus, the details of implementation have been determined during the ongoing practice before and since the Agreement.

5.3.5. Lithuania/Poland: Consular assistance

Before the accession to the EU, Lithuania has concluded consular treaties with Poland concerning the provision of consular assistance in Algeria, Tunisia and Morocco. The arrangement includes some financial compensation by Lithuania. The Agreement was concluded before the Parties accession to the Union. Since the accession, Lithuania considers these treaties as superseded by Art. 23 TFEU.

5.3.6. Germany/France: Co-sharing agreement

The Framework agreement between the Government of the French Republic and the Government of the Federal Republic of Germany relating to the common establishment of diplomatic delegations and consular bases was signed on 12 October 2006 and entered into force on 1 March 2008. It establishes a framework for the co-location of common embassies or consulates. For establishing a common consular post, a special agreement is required that may modify the framework rules. Office space is divided into common and exclusive zones for each partner. Costs of premises have to be shared according to use. Co-ownership of premises is foreseen.

5.4. Added value of such arrangements

These agreements are based on international law and the national laws of the Contracting Parties (e.g., the explicit reference in the Austrian-Hungarian Agreement).

Most agreements only determine object and purpose and do not give detailed rules on consular assistance. Further, these rules are watered down due to deviation clauses that allow a modification by mutual agreement (e.g., the Austrian-Hungarian Agreement). Furthermore, under certain of the regional arrangements the cooperation does not in the slightest restrict the right of the parties to proceed independently in their own interests.³²

³¹ Note that the national Parliament of the Czechoslovak Socialist Republic decided in 1992 to dissolve the country into the Czech Republic and the Slovak Republic, as of 1 January 1993.

³² See Article 1 para 2 and 3 of the Austro-Hungarian Agreement.

Other agreements lack such provisions, however, the contracting parties seem to have an understanding that the relevant rules of international law should not be modified.

The scope of duties can be widened on a case-by-case basis by mutual agreement.³³ The parties agreed to inform each other immediately about perceived functions for the other party.³⁴

Given the practice of framework arrangements with few rules that can be easily modified, it has to be discussed if such treaties are really necessary or can be substituted by an informal arrangement. Austrian practice seems to show that formal arrangements are not required. Co-operation arrangements with Malta or Slovenia function quite well without formal contractual obligations. Another example of an informal arrangement is the verbal agreement on consular assistance between Hungary and Lithuania of 30 May 2007 providing for consular assistance of Hungary in certain countries for Lithuanian citizens. A formalized agreement of 1 April 2008 was signed on visas. Luxembourg seems to have informal arrangements with France and Germany for providing consular assistance on a case-by-case basis.

Consular support functions only if a working regime is established. Implementation of consular assistance requires very quick decisions and delivery of services. A sufficient mutual understanding in a regional or local environment has to be established. Functional networks seem to play a much bigger role than formal treaties.

6. Conclusions

The VCCR can be considered as highly accepted treaty practice reflecting now customary international law (subject to persistent objectors to some provisions). From the other treaties with relevance for consular assistance, only the Agreement on the Transfer of Corpses achieved some prominence. The European Convention on Consular Functions has never entered into force. The extensive practice of “Socialist States” has contributed to the acceptance of the principles of the VCCR and has lost its significance due to acceptance of the VCCR by these countries.

Article 8 VCCR is very open to taking-over of consular functions by third States, however, subject to the agreement of the receiving State. Art. 23 TFEU obliges the EU Member States to negotiate agreements recognizing their duty to exercise consular functions for unrepresented EU citizens. So far, Member States have not negotiated agreements, nor amended the existent agreements as foreseen in Art. 23 TFEU.

It has to be pointed out that the inter-governmental aspect of ex-Art. 20 TEC does not exonerate the Member States from this obligation. The Member States were obliged according to the principle of internal administration³⁵ to effectively implement the ex-Art. 20 TEC. Furthermore, after the elimination of the inter-governmental aspect of ex-Art. 20 TEC and the introduction by the Lisbon Treaty of the Council’s express competence in the field of consular protection, the fulfilment of the obligation to start negotiation with third countries in order to ensure the effective implementation of Arts. 20(2)(c) and 23 TFEU is reinforced. The fact that the Member States have not started negotiations for conclusion of international agreement with third countries for recognition of the exercise of consular protection by EU countries for unrepresented nationals of other EU countries

³³ See Article 1 of the Austro-Swiss Agreement.

³⁴ See Article 3 para 2 of the Austro-Hungarian Agreement.

³⁵ See also *Brasserie du Pêcheur v Federal Republic of Germany* and *R v Secretary of State for Transport ex parte Factortame Ltd* (Cases C-46 and C-48/93).

is not in itself capable of denying this right to the Union nationals, however it is likely to impede its effectiveness³⁶.

European law gives a different focus to consular assistance that should be reflected in international agreements. However, there is no strong need due to the flexibility of the international regime. Consular functions are only loosely described in Article 5 VCCR. The required respect for the national law of the receiving State seems to be the strongest argument for a further clarification of consular functions.

A clear consequence of Article 23 TFEU is that regional and bilateral agreements between EU Member States are no longer required. Article 23 TFEU gives a sufficient basis for pragmatic co-operation environments that can be fine-tuned on a regular basis between the various partners. National reports and experience show that Member States prefer to have flexibility in establishing working networks for consular assistance.

A more detailed regulation of consular assistance seems to be required as detailed standards of consular practice do not exist as international rules. Standards are still only available in internal guidelines what makes review procedures very difficult. More detailed and extensive EU standards replacing the existing Decision 95/553/EC seem to be an obvious next step. These standards will also have repercussions on the national practice.

The agreement of third States for the consular assistance of other nationals is still handled on a case-by-case basis. Most Member States assume that so far silent acceptance of the receiving States on the exercise of consular protection by non-nationality member States will be persistent in the future. However there is no such guarantee according to the norms of public international law. A recommended solution would be to include in international agreements an explicit clause that EU Member States can provide consular assistance to EU citizens, as suggested also by the Commission in its Green Paper. Such clauses may not go that far that the EU standard as agreed in Decision 95/553/EC and has to be accepted also by the receiving States. However, the developing flexibility of mutual co-operation in consular affairs between EU Member States should be covered, e.g., a flexibility for the EU and its Member States to organize consular assistance for EU citizens as efficient as possible. So far, Member States and EU have not taken many steps towards this direction.

Last but not least, the Decision 2010/427/EU establishing the European External Action Service foresees the option of consular assistance by the External Action Service itself [Art. 5(3)]. As Article 8 VCCR does not cover this case of exercising consular functions by an International Organization, agreements with third States should cover this option.

With the VCCR, a highly accepted regime for consular assistance exists on the international level. Art. 23 TFEU provides a framework for consular co-operation between EU Member States. There is still a need for securing the formal agreement of the receiving State on consular assistance being exercised by non-nationality EU countries for EU citizens, to elaborate functions and details of consular assistance as well as a more developed legal framework for handling of ongoing questions but also review procedures. So far, EU Member States have established working networks often on a practical basis not at all fully reflected in legal arrangements.

³⁶ This conclusion has been long reached by the legal academia, see in this regard Closa, *Citizenship of the Union and nationality of Member States*, in CMLRev, Vol. 32, Issue 2, 1995, p. 487-518 and Elisa Pérez Vera, *Citoyenneté de l'Union européenne, nationalité et condition des étrangers*, in Recueil des cours: Collected courses of The Hague Academy of international law 243, 309-16 (1996).

3. The right to consular protection before and after Lisbon

1. The right to consular protection and European citizenship from Maastricht to Lisbon. An overview

The right of EU citizens to diplomatic and consular protection in third countries, where their Member State is not represented, is one of the most significant rights attached to the European citizenship, as embodied in the Treaty establishing the European Community (TEC, Art. 20) and in the Charter of Fundamental Rights of the European Union (“the Charter”, Art. 46); and as it is now confirmed and, in some respects, strengthened by the Treaty of Lisbon entered into force on 1 December 2009³⁷.

The actual implementation of Art. 8C of the Maastricht EC Treaty and now Art. 20(2)(c) TFEU is one of the prerequisites for configuring the European citizenship as an effective legal status and not just as a concept of a political nature. A new fundamental status which provides the legal basis for granting to EU citizens specific rights and obligations, in addition to those deriving from national citizenship is envisaged.

The EU objective in the area of EU citizens’ rights has entered a new phase, after ensuring an effective enjoyment of freedoms and rights across the national borders of the Member States, more precisely within the borders of the European Union, the EU’s objective in this area has reached a more ambitious level: to protect its citizens also outside its borders, thus evolving from a fragile position where Union citizenship ended

³⁷ However, work on drawing up rules similar to the ones embodied in Art. 8C of the Maastricht Treaty began long before the entry into force of the Maastricht Treaty. The establishment of a common protection was put forward for the first time by the Committee “*Europe des citoyens*”, after the meeting of the Fontainebleau European Council held in 1984. (Bull. CE supp. 7/85, p. 22). Pietro Adonino, the president of this Committee, wrote in an article from *Affari Esteri* of October 1985 that one of the topics that was considered by the Committee was “*i viaggi del cittadino al di fuori della Comunità*” [citizen’s travels outside the Community] which was seen as an important topic that had to be put before the next European Council. Therefore, the topic was dealt in more detail in the Report of the ad-hoc Committee which was presented before the European Council in Milan on 28 and 29 June 1985:

“Point 2.6. The citizen as traveller outside the Community

A Community citizen in need of assistance during a temporary stay in a third country where his own country is not represented by an embassy or a consulate should be able to obtain assistance from the local consular representation of another Member State. The Committee recommends that the European Council invite Member States to intensify work for such consular cooperation in third countries and to formulate more precise guidelines.” [The Report of the ad-hoc Committee on a People’s Europe to the European Council in Milan, 28 and 29 June 1985 can be found at www.ena.lu].

On the signing of the Single European Act, a decision of 28 February 1986 of the Ministers of Foreign Affairs meeting within the European Political Cooperation provided that “*Etats membres examineront la possibilité de prêter aide et assistance dans les pays tiers aux ressortissants des Etats membres qui n’y ont pas de représentations*” [Florence Poirat, *Comment on Art 46 of the EU Charter*, p. 578-585 in *Traité établissant une Constitution pour l’Europe, Commentaire article par article*, Tome 2, sous la direction de Laurence Burgogne-larsen, Anne Levade, Fabrice Picod, 2005, Bruylant]. The idea was further developed in “Guidelines for the Protection of Non-Represented EC Nationals by EC Missions in Third Countries”, which were provisionally applied as of 1 July 1993, that is before the entry into force of the Maastricht Treaty [See the first Report drafted by the Commission on European citizenship of 21 December 1993, [COM\(93\)702 final](#), p. 7]. These initiatives were not legally binding, they were only political acts, and therefore the Union citizens acquired a legal individual right to be protected outside the Union only after the entry into force of the Maastricht Treaty.

See for a general analysis of the European right to consular protection: A. Ianniello-Saliceti, *La protezione diplomatica e consolare dei cittadini dell’Unione*, in *Trattato di diritto privato dell’Unione europea, Volume secondo*, Giappichelli, Torino, 2008.

at the borders of the internal market. Clear reasons can be identified for the Union's commitment to create an effective European citizenship: protecting its citizens and enhancing the Union's image of an international coherent power.

Until the elaboration of the Treaty of Lisbon, little progress was achieved in this direction for three main reasons: a) the limited legal basis for adoption of EU law on this matter; b) the diversity of national regulations and foreign policies; c) a purely inter-governmental approach of the field of consular and diplomatic protection of Union citizens, prevailing over the Community method.

Article 20 of the EC Treaty, added by the Treaty on European Union of 1992 as Art. 8C, was then taken literally, in its first part, by the Charter of Nice in 2000 as Art. 46. From the very first reading of this Article, the intergovernmental nature of the area of consular and diplomatic protection transpires: *"Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection"*. Neither of the subsequent amendments of the Founding Treaties changed the nature of this field, which has been long perceived by the Member States as falling under their exclusive competences. Action could be taken in this field only by way of "parallel agreements". This obvious discrepancy between the aim of ensuring non-discriminatory consular and diplomatic protection among the EU citizens, in the specific circumstance of unrepresented EU citizens and the lack of the Union competence to act in this field has been remedied to a certain extent by the Treaty of Lisbon which introduced an express internal competence for the Union to act in the field of consular and diplomatic protection.

Despite the fact that the inter-governmental nature of the area of consular and diplomatic protection was maintained by the Founding Treaties until the Lisbon amendment, the Union Charter has brought the area to another level mainly due to its specific design as a list of fundamental rights and freedoms. Art. 46 of the Charter did not reiterate the final part of ex-Art. 20 TEC, making a clear step towards what will later be Art. 23 TFEU. Thus, the inclusion of an un-discriminatory EC Treaty right to consular and diplomatic protection in the EU Charter transformed it in a fundamental right to consular and diplomatic protection of the Union citizens, as the headline of Art. 46 of the EU Charter provides. For a decade – that is until the entry into force of the Treaty of Lisbon – this intention remained however frustrated by the lack of binding legal force of the Charter. Only recently the Treaty of Lisbon confers the same legal value to the Charter as to the Treaties (Article 6 of the Treaty on European Union).

Aside the provisions in the Founding Treaties, the area of diplomatic and consular protection was governed by two Decisions of the Representatives of the Governments of the Member States adopted in the framework of the Council (Decision 95/553/EC and Decision 96/409/CSFP) and of non-binding guidelines regarding consular protection adopted by the Council of the European Union (document 10109/06 of 2 June 2006).

As regards the legal nature and the question whether Decisions 95/553/EC (hereinafter called EC Decision) and 96/409/CFSP (hereinafter called CFSP Decision) are part of the Union legal order, the majority of the legal literature³⁸ that dealt with these constitutional

³⁸ B. de Witte, *Chameleonic Member States. Differentiation by means of partial and parallel international agreements in The Many Faces of Differentiation in EU Law*, edited by B. de Witte, D. Hanf and E. Vos, Intersentia, 2001 and by the same author, *The emergence of an European system of public international law: The EU and its Member States as strange subjects in The Europeanisation of International Law*, edited by Jan Wouters, André Nollkaemper, Erika de Wet, Cambridge University Press, 2008, p. 39-55; T.C. Hartley, *The Foundations of European Union Law*, Oxford University Press,

questions, principally or incidentally, concluded that they are international agreements concluded between the Member States in a simplified form, so as any other Decision of the Representatives of the Governments of the Member States meeting within the Council. As regards the question of whether these acts are Union acts or only international acts, the majoritarian opinion argues that due to the fact that they are not concluded/adopted by the Union Institutions, then they do not form an integral part of the Union legal order. This Project argues that even if seen as mere international agreements, the Member States are still bound to respect Union law even when acting under their exclusive competences³⁹.

Pierre Pescatore takes a more “Unionist” approach, arguing that even if decisions of the representatives are international agreements concluded by the Member States in a simplified form while acting within the Council, they form an integral part of the Union law and thus are judicially reviewable by the Court due to the fact that they are adopted by the Member States usually for the fulfilment of their obligations under the Treaties⁴⁰. According to the author, the duty of sincere cooperation as laid down in now Art. 4(3) TEU, requires the Member States to take all measures possible, whether general or specific to ensure the fulfilment of their obligations. According to Pescatore, decisions of representatives fall under the requirement of the Member States to adopt individual measures necessary for the implementation of Treaty articles. The EC and the CFSP Decisions are indeed adopted by the Member States on the basis of former Art. 20 TEC, for the purpose of fulfilling their obligations under this Article. Therefore, according to Pescatore’s opinion, both Decisions form an integral part of the Union law, as they are adopted by the Member States under the obligation imposed on them by the Union law and not guided by their own free will of acting internationally. The fact that they are adopted in the framework of the Council strengthens this argument.

Being part of the Union law, an important question is whether Decisions of the representatives, and thus also the EC and the CFSP Decision, are judicially reviewable by the European Courts. Pescatore makes it very clear that since the task of the Court is to ensure the respect of law which has to be understood as going beyond the mere interpretation and application of the Treaty, but to include also the acts adopted by the Member States in the implementation of the Treaties’ Articles and objectives, then the European Court of Justice has the competence to interpret also the decisions of the representatives⁴¹. Following this logic, the Commission has competence to bring infringement proceedings since the conclusion of such Decisions by the Member States is in regard to certain Articles, as is the case with former Art. 20 TEC⁴², the only way of ensuring fulfilment of the Treaty objectives.

The only form of judicial review which is questionable whether it can apply to Decisions of representatives and thus to the EC and the CFSP Decisions, is the one undertaken in an action of annulment, as this judicial procedure can be brought only against Union acts, which the Decisions are not. The argument put forward by the author is that being acts adopted in the framework of the Council, the latter is not entirely unaware of this measure, furthermore, the measures must have the informal approval of the Council, since the Member States are using the Council’s institutional setting and thus it should be the Council the one to bear responsibility for the these actions, and not to use the term “adopted in the framework of the Council” as an excuse to escape judicial responsibility.

7th edition, 2010, p. 94; K. Lenaerts, and P. Van Nuffel, *Constitutional Law of the European Union*, 2nd ed., London, Sweet & Maxwell, 2005, at pp. 39-40.

³⁹ Case C-124/95 *The Queen v. H.M. Treasury and the Bank of England ex parte Centro-Com* [1997] ECR I-81, para. 30 and more recently stated by the Court in the smart sanctions case law.

⁴⁰ P. Pescatore, *Études de droit communautaire européen 1962-2007: Avec une liste bibliographique complémentaire*, Bruylant, 2008.

⁴¹ *Ivi*, p. 217.

⁴² According to former Art. 20 TEC, the Member States were the only ones having competence to act and fulfill the objectives of Art. 20 TEC, the Union did not have competence to act.

The conclusion of Pescatore on the nature and the question whether decisions of representatives are part of the Union legal order is a logical result of his view on the competences of the Member States to conclude such decisions⁴³. His approach is that such decisions are adopted by the Member States in order to supplement the Union⁴⁴ action in areas where the latter has insufficient competences. Therefore, it can be easily observed that the rationale of representatives of the government concluding decisions is to supplement the Union competences in achieving the Union's objectives and defend the common interests.

Although the arguments of Pierre Pescatore are considered valid and reasonable under this Report, it has to be noticed that for a long period of time, his opinion has been singular⁴⁵. Only lately it seems that the academic opinion converges towards a similar interpretation⁴⁶ as that of Pierre Pescatore.

Decision 95/553/EC states the conditions that must be met in order to benefit from consular protection⁴⁷. The subsequent Decision - Decision 96/409/CFSP defines a new document called the Emergency Travel Document (ETD) valid only for one trip and under certain conditions. On the basis of these two Decisions in conjunction with ex-Art. 20 TEC (now Art. 23 TFEU) it is clear that the principle of non-discrimination⁴⁸ – relevant for the feature of the right to consular and diplomatic protection – prohibits the Member State providing assistance to citizens of another EU Member State to treat them differently from its own nationals, as long as the EU citizen requesting consular or diplomatic protection is unrepresented in the third country.

As regards the legislation of the EU countries, it appears from the national Reports that the domestic legislations are indeed different, however not to the extent they were previously considered. Due to a process of legal “convergence”, implementation of legal institutions established by international norms and mutual influences among the EU countries, the current situation of the legislation in the twenty-seven EU countries shows more differences in quantity rather than in quality, except for some points to be discussed later (like the effectiveness of the right to consular protection, considering also that some Member States leave much of the field to the regulation by practice instead of regulation by law or transparent executive acts). The current normative

⁴³ P. Pescatore, *Études de droit communautaire européen 1962-2007: Avec une liste bibliographique complémentaire*, Bruylant, 2008, p. 219.

⁴⁴ The term “Union” is used instead of Community which was the term referred to by Pierre Pescatore, for reasons of conformity with the Lisbon Treaty as the Report is drafted after the entry into force of the Lisbon Treaty.

⁴⁵ Most of the legal commentators viewed the two Decisions as non-EU acts and out of the jurisdiction of the Luxembourg Courts: S. O'Leary, *The Evolving Concept of Community Citizenship - from the Free Movement of Persons to Union Citizenship*, Kluwer Law International, 1997, pp. 50-57; B. de Witte, *The emergence of an European system of public international law: The EU and its Member States as strange subjects in The Europeanisation of International Law*, edited by Jan Wouters, André Nollkaemper, Erika de Wet, Cambridge University Press, 2008, p. 39-55; K. Lenaerts, and P. Van Nuffel, *Constitutional Law of the European Union*, 2nd ed., London, Sweet & Maxwell 2005, at p. 39-40; Closa, *Citizenship of the Union and nationality of Member States*, in CMLRev, Vol. 32, Issue 2, 1995, pp. 487-518.

⁴⁶ See T. Hartley, *The Foundations of European Union Law*, 7th edition, Oxford University Press, 2010, p. 94.

⁴⁷ According to Decision 995/553/EC, these conditions are: (i) An embassy, general consulate of the citizen's own Member State has to be absent in the third country in which the citizen requesting protection is located; (ii) an Honorary Consul competent for such matters or another State representing the concerned Member State on a permanent basis has to be absent; (iii) The citizen requesting protection has to show a passport, identity card or other document as a proof of his/her nationality.

⁴⁸ The [European Parliament Working document on diplomatic and consular protection for citizens of the Union in third countries](#) expressly mentions that ex-Art 20 TEC lays the basis for the principle of non-discrimination in the field of consular and diplomatic protection.

differences affect, of course, the levels of benefits guaranteed by the States to their citizens, and therefore also to nationals of the other EU countries.

The limited effects of the initiatives undertaken by the European institutions until now are not primarily due to significant differences among the national regulations, but rather to the constraints imposed by the Member States on the EU power of action in this field. These constraints resulted from the lack of possible legal basis for EU action and for the consideration of the diplomatic and consular function as an essential aspect of the inalienable national sovereignty (see Summary Report of Public Hearing of 29 May 2007 on the 2006 Green Paper).

With the existing legal basis laid down in the Treaty on the European Union and the Treaty on the Functioning of the European Union and the new opportunities arising from the amendments brought by the Lisbon Treaty, the right to consular and diplomatic protection of EU citizens has all the chances possible to be developed uniformly by Union action and under the supervision of the European Courts. Having in mind that, each year around 40.000 EU citizens, not represented by their State in third countries, require consular assistance by consular representatives of other Member States⁴⁹, and that the number of cases grows rapidly due to various converging reasons, the adoption of European secondary law is highly recommended and seriously taken into consideration by the European Commission.

2. The scope of consular protection

As regards the scope of consular protection, three points need to be clarified: first point relates to the distinction between diplomatic protection and consular protection; the second regards the actual trends of the Union law, which seem to focus for the moment more on consular protection, and thirdly relates to the question whether non-EU family members should benefit of the provisions of Art.23 TFEU⁵⁰.

⁴⁹ See Commission Action Plan 2007-2009, p. 3 and footnote 5.

⁵⁰ The first question – whether Art. 20(2)(c) TFEU includes both a right to consular and diplomatic protection – was put forward by international law academics [Dugard, *Seventh Report on diplomatic protection*, United Nations General Assembly, A/CN.4/567, United Nations, New York, 7 March 2006, p. 10; A. Vermeer-Künzli, *Exercising Diplomatic Protection, the fine line between litigation, demarches and consular assistance*, 66 ZaöRV 321-350, pp. 339-340; T Stein, *Interim Report on “Diplomatic Protection Under the European Union Treaty”*, in: ILC Committee on Diplomatic Protection of Persons and Property, Second Report (New Delhi, 2002), at pp. 36-7], seeing the Article as a breach of international law, as another example of the Union wanting to impose its own norms without taking into consideration rules of public international law. According to these authors, under international law, only consular protection could be, though reluctantly, interpreted as possible to be exercised also for non-nationals, while diplomatic protection has been interpreted since the Vatelian construction of protection by the States to its citizens, in 1758, and still is a prerogative of the State to be exercised only for its own citizens. The Union clearly provides a right to diplomatic protection for the Union citizens which must be exercised by another Member State than the State of nationality if the Union citizen is not represented on the spot by his/her own Member State. **This Report argues that by providing for a right of the citizens, not a right of the State** [The ILC draft Articles on diplomatic protection still present the diplomatic protection as a right of the States, however, due to the Rapporteur pressure to introduce also more recent State practice, there is also an Article recommending the States to consider a duty to exercise diplomatic protection in cases of breaches of *jus cogens* obligations by third States], **and for the exercise of diplomatic protection by the Member States to non-nationals, the Union has developed its own concept of diplomatic protection, which does not go against the rules of public international law.** The international norms are *de minimis* rules, from which the Member State, if it wants and consents, can go beyond. The Member States aware of the today's realities which do not correspond anymore to those of the 1758, have unanimously agreed to go beyond the *de minimis* rules of public international law and included Art. 20(2)(c) in the TFEU and Art. 46 in the EU Charter. The Member States aware of the

In the EU primary law, consular protection is always accompanied by diplomatic protection, even in the most recent formulation given by the Treaty of Lisbon. The same position is taken in the Union soft law acts, while Decisions 95/553/EC and 96/409/CFSP, aimed at implementing the EU primary law, focus only on consular protection. Therefore, it seems that until present, the focus has been on developing implementing measures only on consular protection. On the other hand, only consular protection is addressed by the Commission's proposals for further EU initiatives (such as the Commission's Green Paper, *Diplomatic and Consular Protection of Union Citizens in Third Countries*, 28.11.2006, COM (2006) 712 final and the Commission Action Plan for 2007-2009⁵¹).

As a matter of fact, the two types of protection afforded to European citizens have very different features. The diplomatic protection's object is an interest of the State, even though the individual may exercise this function and may have an interest closely related to that of the State. The diplomatic protection is exercised by means of "prerogative acts", normally exempted from judicial review, that the International Court of Justice considers purely discretionary acts for which the State enjoys wide freedom of action. On the contrary, consular protection is exercised for and in the name of the interests of the citizens who are in the territory of another country (the *receiving State*, according to the terminology of the Vienna Convention of 1963), which can sometimes engage also the convergent interest of the State. In contrast, for the exercise of diplomatic protection the legal interest of the State is a necessary procedural condition for the admissibility of the application before the court. For this reason, the acts performed under the exercise of consular function are normally judicial reviewable, while the decisions of the executive to exercise diplomatic protection are subject to a wider margin of discretion; although, as we shall see, the judicial review is not a common phenomenon for a number of reasons.

Consequently, the nature of diplomatic protection is essentially political and international⁵², whereas that of consular protection is administrative. In the last fifty years, the difference has been formalized in the two Vienna Conventions, and further explained in the ILC draft Articles on diplomatic protection which have been developed on the basis of the national laws, case law and legal literature. In light of the delicate foreign policy and diplomatic problems that the exercise of diplomatic protection entails⁵³, it is then understandable why the European Union, when developing the theme

discretion left to the receiving States under the international law framework – Art. 8 of the VCCR and Art.6 of the VCDR – and that international protection of the Union citizens requires by its very nature the exercise of the Member States duty outside the borders of the Union, in third countries which are not bound by the EU Treaties, have thus included in Art 23(1) TFEU the obligation of the Member States to negotiate international agreements with third countries for the purpose of obtaining the consent of the third countries for the exercise of consular and diplomatic protection for non-national Union citizens. According to the information provided by the national Reports, in the last 17 years of consular practice no objection has been raised by the third countries to the exercise of individual international protection by the Member States for the non-national Union citizens, which raises the possibility of the establishment of a customary rule whereby the third countries have acquiesced to the Union practice.

The second point refers to the trend followed by the Union to focus more on developing consular measures aimed at protecting its citizens.

⁵¹ According to the Commission Action Plan, at p. 7: "*In the time-frame covered by this Action Plan, the Commission will therefore concentrate on improving consular protection of Union citizens in third countries. This is without prejudice to possible future action in the area of diplomatic protection.*"

⁵² See the distinction between the status of diplomatic protection under current international law and EU law in [Section 4 of Chapter 3](#).

⁵³ By invoking diplomatic protection, a State is putting more in danger its relation with the other State than by invoking consular protection which does not require invocability of international responsibility.

of European citizenship, placed emphasis on consular protection, leaving aside, at least for the moment, the development of diplomatic protection.

The second point to be clarified is the European Union's decision to focus on the scope of consular assistance initiatives rather than on the overall consular function. The focus of the European initiatives is indeed the care and protection in third countries of EU citizens who are in difficult situations (distress). A typical example is the above mentioned Decision 95/553/EC providing forms of assistance in case of death, disease, accidents, situations of terrorism and violence, and the like. As important as it is for individuals, such situations are a part of the wider consular function, which consists also in actions and assistance in "ordinary" situations, covering not only individual interests, but also interest related to promoting cultural events, development of exports, etc.. These functions are clearly of an administrative nature, similar to those provided by the national competent authorities within the national borders; abroad these functions are exercised by the consular authorities, which in turn can be supported in their actions by specialized bodies, including private organizations like bilateral chambers of commerce. The third contentious point in regard to the scope of consular protection relates to issue of whether family members are individuals benefiting of the provisions of now Art. 23 TFEU (possibly also stateless persons and long-term residents in the EU countries). The Green Paper expressly suggested to extend consular protection to Union citizens' family members who are third country nationals, by appropriate means. In light of the fact that certain Union Citizens' rights have been extended to a certain extent also to the non-EU family members of the Union citizens due to the close and special family link that exists between them and due to the fact that the right to family life is protected by the European Court of Human Rights and by the Luxembourg Courts, the right to consular and diplomatic protection should be extended also to family members (at least in emergency situation, considering the financial implications of such an extension makes it very difficult to extend the right in all distress situations⁵⁴).

3. The novelties introduced by the Treaty of Lisbon

The Treaty of Lisbon, which entered into force on 1 December 2009, brings three new important amendments in the area of diplomatic and consular protection of Union's citizens in third countries.

First, in the Treaty on the European Union, the principle of European citizenship – so far covered by the European Community Treaty, Arts. 17 et seq. – is included (Art. 8) in the new Title II, devoted to "*Provisions on democratic principles*". Then there are two complete new Chapters: Chapter 1, dedicated to "*General provisions on the Union's external action*"; Chapter 2, devoted to "*Specific provisions on the common foreign and security policy*" with relevance for enhancing the implementation of the provisions of Arts. 20(2)(c) and 23 TFEU.

Secondly, the Treaty on the Functioning of the European Union (TFEU) clarifies whether the right to consular and diplomatic protection is or is not an individual right which the Union citizens can invoke directly before the national courts. Under the

The exercise of diplomatic protection by a State in favour of its citizens is in itself a sanction of the violating State. The general rule is well established that the courts should not interfere in the conduct of foreign relations by the Executive, most particularly where such interference is likely to have foreign policy repercussions (see *R. v. Secretary of State for Foreign and Commonwealth Affairs, ex parte Everett* [1989] 1 QB 811 at 820).

⁵⁴ According to the information provided by the national Reports, almost all the Member States already confer this extension.

former TEC, there were numerous academic statements brought by the Member States that former Art. 20 TEC was not clear whether it provided or not an individual right which had direct effect before the domestic courts⁵⁵. The new structure of former Art 17 EC Treaty now Art. 20 TFEU eliminates the previous confusion, as it is structure as a list of rights for the Union citizens, among which is to be found the right to protection by the consular and diplomatic authorities of the Member States. This provision is confirmed in Art. 23 TFEU, which enhances the previous version of Art. 20 of the EC Treaty, on diplomatic and consular protection of EU citizens, with a visible strengthening of the EU competence in this field. Furthermore, important innovations are introduced on the "administrative cooperation" as a "matter of common interest".

Thirdly, at last the legal value of the Charter of Fundamental Rights is defined: Art. 6 of the TEU, replacing the previous Article with the same number, states that "*The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adopted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties*".

Therefore, the legal framework established by the Treaty of Lisbon contains relevant innovations for the subject in hand, so as to bring out a different approach from previous proposals and claims resulting from the European Commission's 2006 Green Paper, from the initiatives of the European Parliament on the same subject and from the consequent public debate. These proposals were obviously based on the Union and EC law (the latter being replaced by the EU) which was in force at that moment.

The various innovations are confirmed also by the decision of the Commission's President, Barroso, of 27 November 2009, concerning the composition of the Commission and the portfolio of commissioners to adapt it to the Treaty of Lisbon. As it results from the *communiqué* of the Presidency, a new portfolio has been introduced – assigned to Commissioner Viviane Reding – for "Justice, fundamental rights and citizenship". This decision will certainly bring about original initiatives of the Commission on the topic under investigation.

4. Detailed analysis of the novelties brought by the Lisbon Treaty

A detailed analysis of the innovations arising from the Treaty of Lisbon follows.

The new structure of the Treaties in two separate texts (the TEU and the TFEU), to which the Charter of Fundamental Rights must necessarily be added, despite the formal legal identity of the three texts, indicates a significant constitutional role of the EU Treaty and the Charter. The two texts take the place of the Constitutional Treaty of 2004, with the only difference (purely formal) of bearing a less demanding name. As it has been properly said, "if the *nomen juris* disappears, the constitutional nature remains, which, interestingly is strengthen on many points. The de-constitutionalisation is illusory; the European constitutional framework is preserved and developed" (A. Manzella).

4.1. It is significant that the principle of European citizenship is already considered in the TUE, because it obviously represents one of the fundamental aspects of "democratic

⁵⁵ C. Closa, *Citizenship of the Union and Nationality of the Member States*, 32 CMLRev. 1995, p. 502 and Kadelbach, *European Integration: The New German Scholarship*, Jean Monnet Working Paper 9/03; this approach is found also in the national Reports on France, Ireland, Poland, UK.

principles of the EU" (Title II). The many implications of the principle are then left to the TFEU consisting in more detailed and operational rules.

A major reform is provided in the Treaty of Lisbon for "the Union's external action" (Title IV of the Treaty), where many specific and detailed provisions (Articles 23 and ff. Chapter II, in turn divided in two sections), as well as general provisions (Articles 21 and 22 of Chapter I) are included. This is the most innovative part of the Treaty, which defines the common action of the Union; establishes the High Representative of the Union for Foreign Affairs and Security Policy; expressly provides for the possibility for the EU to conclude agreements with one or more States or international organisations in areas relevant to the Treaty; starts the setting up of a "European External Action Service", the first structure of a common European diplomacy, which may take in time attribution of the consular function of the Member States⁵⁶.

A thorough examination of reforms on EU's foreign policy does not fall under the present research, particularly due to the limited space, but it is worth emphasizing that from the undoubted progress towards a new common dimension of foreign policy, traditionally handled by States in their full sovereignty, opportunities to develop issues of diplomatic and consular protection of Union citizens in third countries will surely arise.

The main consequence is the strengthening of European citizenship rights associated with new powers of the High Representative and the European External Action Service. The mentioned rights will find a specific point of reference in the EU organization. To the European citizenship, already guaranteed "horizontally" on the basis of the principle of equal treatment for nationals of Member States who are in other EU countries, it will be added a "vertical" relevance in respect of the Union's bodies. This is one of the major new elements in the process of providing a precise legal meaning to the concept of European citizenship.

Finally, it is worth mentioning Art. 35 TEU: "*The [diplomatic and consular mission of the Member States in third countries] shall contribute to the implementation of the right of citizens of the Union to protection in the territory of third countries as referred to in Article 20(2)(c) of the Treaty on the Functioning of the European Union and of the measures adopted pursuant to Article 23 of that Treaty.*" This is a more specific application of the principle of sincere cooperation and internal administration in the field of consular and diplomatic protection. On the basis of this Article the Member States can continue to concluded burden sharing, co-location agreements and further agreements that may lead to the implementation of the right of the unrepresented Union citizens to consular protection. Judicial clarification of the material scope of this Article is however not possible, since the ECJ does not have jurisdiction over Title V.

4.2. The second Treaty is the one on the Functioning of the European Union (TFEU) which, together with the TUE constitutes the foundation of the Union. It is not just a change of names or a mere revision of the TEC, deriving from the replacement of EC by

⁵⁶ It is interesting to note at this point an assumption made by Magnette in 1999 that a structure by which European protection would apply to EU nationals outside the Union would require a federal structure in which the EU itself would be vested with legal status and a diplomatic infrastructure. Ten years after, the Lisbon Treaty has merged all the pillars into one international organization being conferred expressed separate legal personality from the Member States and endowed with a diplomatic structure able to represent the interests of the Union and its citizens outside the Union borders – the EEAS. (Paul Magnette, *La citoyenneté européenne: droits, politiques, institutions*, Imprint Bruxelles: Editions de l'Université de Bruxelles, 1999).

the EU, but a rewriting of sometimes entire parts of the former TEC, with substantial innovations.

Concerning the subject of our interest, Art. 23 TFEU includes two changes/additions: a) the clause “*Member States shall establish the necessary rules among themselves [...]*” is replaced by “*Member States shall adopt the necessary provisions [...]*”; b) a new paragraph is introduced: “*The Council, acting in accordance with a special legislative procedure and after consulting the European Parliament, may adopt directives establishing the coordination and cooperation measures necessary to facilitate such protection*”. Therefore, the consolidated text of the first paragraph of Art. 23 of TFEU is the following: “*Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection*”. The second paragraph, original, is the provision in relation to the directives of the Council for measures of coordination and cooperation. Although the special legislative procedure preserves, for the role of the Council, some inter-governmental characters the Europeanization of the area is evident, so far of the exclusive competence of States.

On the basis of Art. 23 (2) TFEU, the Council has now express internal competence to act in the field of consular and diplomatic protection. Action can be taken by way of directives adopted by a special legislative procedure, meaning that the Council is the only Union Institution to adopt the legislative act, the European Parliament will only be consulted. According to Arts. 17(2) TEU and 23(2) TFEU the Commission has the right of initiative, therefore, directives can be adopted on the basis of a proposal from the Commission. An additional salient amendment introduced by the Lisbon Treaty in order to further facilitate consular protection for the Union citizens is the extension of the qualified majority voting procedure over the area of consular protection. The Court of Justice will have full jurisdiction to review the Council directives, in contrast with the present situation, where the Decisions 95/553/EC and 96/409/CFSP cannot be judicially reviewed. The benefits of having a judicially reviewable Union legislative act in regard to which the principle of indirect administration applies are evident as they also result from the judgment of the Court in Case C-429/01 *Commission v France*. The changes brought by the Lisbon Treaty to the Union’s competence in the field of consular protection illustrate the application of the general objectives of the Union in the specific field of the Union’s citizens consular protection. As regards the external competence of the Union to act in the field of consular protection, the internal competence of the Union to act in the field of consular and diplomatic protection may lead in the future to possible exclusive external competence if the conditions established by the ECJ in the ERTA case⁵⁷ and further developed in the Lugano Opinion⁵⁸ will be met. This possibility is not excluded, since according to Arts. 4(1) and 2(2) TFEU, the competence of the Union to act in the field of consular protection is a shared pre-emptive competence⁵⁹. The express conferral of internal competence to the Union to act in the field of consular protection and the classification of the Union’s external

⁵⁷ Case 22-70 *The European Road Transport Agreement (E.R.T.A.): Commission of the European Communities v Council of the European Communities*.

⁵⁸ Opinion 1/03 (*Lugano Opinion*) of 7 February 2006.

⁵⁹ However, the area may remain shared competence, depending on the content of directives to be adopted by the Council. According to Art. 23(1) TFEU, directives adopted under this legal basis are minimum harmonisation measures, which, according to the ECJ Opinion 2/91 *OECD* [1993] ECR I-1061, may not lead to the creation of exclusive competence for the Union.

competences as a shared pre-emptive competence changed the actors that used to be involved in the conclusion of international agreements in the field of consular protection or having provisions on consular protection. If, until the entry into force of the Lisbon Treaty, the EU Member States had exclusive competence to act externally, starting with 1 December 2009, the area is no longer under the entire sovereign powers of the Member States, the Union has competence to act both internally (Art. 23(2) TFEU) and externally (residual shared external competence – Art. 4(1) and 2(2) TFEU).

4.3. The third novelty arising from the Treaty of Lisbon is the explicit recognition of the Charter of Fundamental Rights as an act with “the same legal value as the Treaties” (Art. 6 TEU, in the new text replacing the former). The rights covered by the Charter assume a specific legal force, after a period of uncertainty due to the lack of definition, of the nature of the Charter, which therefore was inevitably only partially exploited by the Court of Justice and by the Court of First Instance only as a “source of inspiration for judges”.

The qualification of the right of the Union’s citizens to diplomatic and consular protection in third countries as a “fundamental right” requires the EU institutions and the EU countries to take the necessary measures to guarantee its effective protection, which is an essential task necessary for the fully recognition of the concept of “European citizenship”.

The configuration of the fundamental right to consular and diplomatic protection for unrepresented EU citizens, has implications also for the non-contractual liability of the Union Institutions and, in their sphere of activity falling under the scope of Union law, also for the non-contractual liability of the Member States. Indeed, failure or improper performance of commitments to ensure the effective diplomatic and consular protection to EU citizens may imply non-contractual liability of competent bodies. So far the only known case in which the issue was raised (Court of First Instance, judgment of 6 June 1995, T-572/93) had no consequences for the Commission, however, the specific circumstances of the case have to be taken into account, namely the existence of an international agreement on trade between the ex-Community and a third country expressly providing for the duty of diplomatic protection on the part of the Commission for EU citizens and ships, and the fact that the applicant has not shown the necessary proof of fault on the Commission to exercise diplomatic protection. It is common knowledge, however, that the Court of Justice has now clearly defined the non-contractual liability framework for breach of EU law, where the case under consideration can also be included. In this way, using the European citizens’ initiatives for the protection of their rights, new incentives can be achieved in practice to realize effective protection.

4.4. National reports show a very different situation about the classification of the “right” to consular protection as a subjective right of individuals.

Before assessing the relevant information made available by the national Reports on the issue of the existence or not of a right to consular protection under the domestic legislation, firstly the particularities of this right at the EU level have to be pointed out. Current Arts. 20(2)(c) and 23 TFEU reiterate to a certain extent the words of ex-Art. 20 TEC in the sense that these Articles do not confer a right as such to diplomatic and consular protection to the EU citizens, or an equal treatment, in general, between the EU citizens as regards the receiving of consular and diplomatic protection. As rightly

pointed out by Stavridis and Thouez⁶⁰, this Article has not given the right to the EU citizens to consider their home State and the other Member States as equals in terms of their obligation to provide diplomatic and consular protection, it is only in the precise and restrictive situation of an absence of national consular or diplomatic protection of the home State that this principle of non-discrimination arises.

As to the situation of the right to consular and diplomatic protection in the national legislations, while in some EU countries the right to consular protection is enshrined in the Constitution, with a clear emphasis on the nature of a subjective right, in other States the consular function is considered a "*matter of policy*", where no rights can be envisaged, but at most *legitimate expectations* in compliance with codes of practice or administrative guidelines. Example of this latter approach is the United Kingdom, where the Government has no legal obligation to provide consular assistance to their nationals abroad. In fact, assistance is largely provided, but on the basis of *ad-hoc* decisions and following simple and flexible guidelines.

Other national Reports that mention a similar practice are the ones on Austria, Belgium, Cyprus, Ireland, Malta, Luxembourg and the Netherlands. In light of such a diverse status of the right to consular protection within the national legislations, the Governments of the latter group of States have shown concerns on whether they have or do not have to confer the same rights to the applicant EU citizen that he/she receives from his/her home State. The question finds an answer based on the current content of Arts. 20(2)(c) and 23 TFEU provisions, which clearly do not confer a right as such to consular and diplomatic protection to EU citizens. Therefore, at first value, these Articles do not require the Member States to confer to the applicant, an EU citizen, the rights he/she is conferred under the national legislation of his/her home State, the principle of non-discrimination applies only in relation to the nationals of the Member States present in the third country. However, at a closer look, it can be easily observed that the existence of such diverse domestic legislations might deprive the purpose of Arts. 20 and 23 TFEU of all useful meaning.

Among the many consequences of the classification of the right to consular protection as a full "right" that is legally protected, the justiciability of consular function acts is amongst the most important. If this will actually happen in the courts of the Union, the nature of the "right" under consideration will be confirmed. Some judgments of the Court in related areas (such as litigation on common commercial policy) have stated the justiciability of the contested EU decisions. It is the case, for example, of the sentence of the Court of First Instance of 14.12.2004, in Case T-317/02.

5. The reasons for a more direct EU commitment to consular protection

With the entry into force of the Treaty of Lisbon the right to diplomatic and consular protection already provided under the former TEC is thus consolidated, and a salient

⁶⁰ S. Stavridis, C. Thouez, *The International Protection of the EU Citizen*, in: *Citizenship and governance in the European Union*, edited by R. Bellamy and A. Warleigh, p. 163-180, Continuum studies in citizenship, 2001. In the same vein, see also M. Condinanzi, A. Lang, B. Nascimbene, *Citizenship of the Union and free movement of persons*, p. 45-48, Martinus Nijhoff Publishers. A similar characterisation is provided by the Opinion of AG Bot delivered on 24 March 2009 Case C-123/08 *Criminal proceedings against Dominic Wolzenburg*, para. 140: "Finally, it must extend the protection of its diplomatic or consular services to each citizen of the Union who is in a third country, if the protection afforded by the Member State of which the person concerned is a national is lacking." The same idea was previously put forward in the same year by the same AG in his Opinion in Case C-66/08 *Criminal Proceedings against Szymon Kozłowski*, para. 101.

innovation is provided consisting in conferring a precise legal force to the Charter of Fundamental Rights, equal to that of the founding Treaties, namely of a primary law nature. The Union system of protection of fundamental rights will be completed once the Union will accede to the European Convention on Human Rights (Communication from the Commission to the European Parliament and the Council - *An area of freedom, security and justice serving the citizen*, 10 June 2009, COM (2009) 262).

The need to provide for the right to consular protection derives not only from the evolution of the European law, but also from obvious substantial/factual reasons.

In fact, quite recently, new events of a different nature have occurred, which point to the need of achieving convergence and consistency of the national patterns of diplomatic and consular protection for EU citizens in third countries. The tsunami and the Lebanese crises made it obvious that even the best, widest and most resourceful consular services could not cope on their own⁶¹.

Consider – just as examples among many – the expansion of the outgoing tourism from Europe, the phenomenon of retired and elderly people residing in third countries, the relocation of many manufacturing activities accompanied by the establishment – permanent or temporary – of entrepreneurs and staff in new locations, the effects of some major natural phenomena such as earthquakes or tsunamis, epidemics or pandemics, acts of local or international terrorism. Other recurrent cases as loss of documents, repatriation of remains of deceased persons, emergency hospitalizations for diseases have been always known. Many situations in question relate to situations of difficulties (*distress*) of persons, but there are also other traditional situations (permanent residence abroad), whose importance can now be interpreted in different ways (permanent residence abroad not for work reasons, but to change one's life at the end of the working period). In addition, the 2004 and 2007 enlargements have brought an interesting phenomenon: on the one hand the number of the Member States represented in all third countries has decreased, reducing the number of third countries where all 27 Member States are represented to only three – the People's Republic of China, the Russian Federation and the US⁶². At the same time the number of Union citizens who may be entitled to protection has increased considerably. Briefly, complex social and economic patterns are leading to a new overview of the issue of protecting EU citizens in third countries. These substantial reasons are widely examined – in a completely acceptable way – in the above mentioned Commission's Green Paper on "Diplomatic and consular protection of Union citizens in third countries". The most recent data (Communication from the Commission - *Justice, freedom and security in Europe since 2005: an evaluation of The Hague program and action plan*, 10 June 2009, COM (2009) 263) indicate that an estimated 8,7% of EU citizens, or 7 million people, traveling outside the EU do so to countries where their Member State is not represented. A further 2 million EU citizens live in such countries. EU citizens who need consular protection outside the EU are around 450.000 per year; about 40.000 of these are nationals of Member States not represented in third countries.

The current situation of common protection of the citizens of the Union is not satisfactory, for four main reasons: a) only a part of the Member States have diplomatic missions or consular posts in all third countries, especially after the EU enlargement to 27 Member States. On the other hand, the Union's presence through delegations in third countries is under development (this seems to be a reason for increase cooperation with

⁶¹ See more in G. Porzio, *Consular Assistance and Protection: An EU Perspective* in Hague Journal of Diplomacy, vol 3, issue 1, pp. 93- 97.

⁶² [European Commission's Green Paper of 2006](#), p. 4.

the Member States for the purpose of the international protection of the EU citizens); b) the level of diplomatic and consular protection varies considerably in among the EU countries, so that, even if the protection is afforded to European citizens of another State, different levels of protection are provided; c) the high demand for protection, also prompted by the emphasizing by the European Institutions of the concept of European citizenship is not appropriately reflected in a shared European model of protection; d) the agreements to fund protection are not yet sufficiently developed so as to hinder the provision of adequate protection. The financial issue is particularly sensitive to the States with large networks of consular offices in third countries, to which nationals of Member States not represented in those countries apply.

As a concluding remark, it can be noticed that from a legal point of view a tension is evident between the traditional model of diplomatic and consular protection (embraced by international law and the majority of the EU countries) and the very real implications of the new concept of European citizenship, particularly those resulting from the diplomatic and consular protection afforded by the Member States in third countries also to nationals of other Member States which do not have representation. On the other hand, the facts show that currently, there is an underestimated phenomenon that has reached a significant dimension, tending to increase, which points to the need of reaching a resolution compromise between the traditional model of diplomatic and consular protection and the new model of European citizenship.

6. The profiles of international law interfering with the Union and Member States' action.

From a legal perspective, the innovations brought at the EU level to the international protection of the EU citizens may remain ineffective, due to the particularities of this field. Since consular and diplomatic protection inevitably involves the presence of the Union citizens in a third country, the Union internal legislation is not the sole legislative aspect that has to be taken into consideration. Thus, the new Union model of citizenship cannot be effective if the third countries can discretionary oppose to such a model, since Art. 8 of the Vienna Convention gives them this power. After the aforementioned problems rose by the internal implications of the newly designed right to consular and diplomatic protection of the unrepresented Union citizens, the external implications may also raise certain difficulties for the exercise of this duty of the Member States.

On this point, a difficult problem results from an overlap between the “supranational” law – what is the EU law – and the international law. According to a well-established international tradition, consular protection for citizens of other States is possible only if the receiving States consents to. To remedy this state of affairs, ex-Art. 20 TEC stated that “*Member States [...] shall start the international negotiations required to secure this protection*”.

For the moment, only a few Member States have signed bilateral agreements with third countries including provisions on extension of their consular and diplomatic protection also to nationals of other Member States⁶³. A necessary step is that Member States formally agree with third countries to extend consular protection also to other EU citizens. For such a relevant question, which is of common interest within the Union, the method for which a State can protect citizens of other States with their consular representations following a simple notification to a third State – subject to exceptions – does not seem appropriate (although such method is acknowledged by the Vienna

⁶³ See Chapter 3, [Section 3.1](#).

Convention on consular relations, Art. 8, however, if the privilege is not embodied in a formal international agreement the third countries may withdraw whenever they want). Instead, what is needed is an effective coordination among Member States in order to ensure the highest possible number of common provisions in bilateral agreements, far beyond the results achieved on the basis of Decision 88/384/EC.

It is obviously an open question whether the progress of EU law can reach a uniform form and content by way of concluding such agreements, possibly with the intervention of the Commission, following the model of “mixed” agreements as in the Open Skies agreements. So far in this regard very different opposing arguments have been put forward and several Member States have reaffirmed their approach of seeing consular and diplomatic protection as a field falling under their full sovereign powers.

The opposing or differing views of the Member States on consular and diplomatic protection come also from the different perceptions they have on consular protection on the one hand and diplomatic protection on the other hand, when the Charter of Fundamental Rights presents these two types of protection as joint concepts (see the section of Art. 46). Therefore, the strictly State character (at least until now) of the diplomatic protection encourages a similar State characterization of consular protection.

Indeed, as already mentioned, the two kinds of protections have very different peculiarities. Diplomatic protection (see the *Report of the International Law Commission 2006, A/61/10*) consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility, when the individuals concerned have exhausted their opportunities for direct protection. Therefore, it is an instrument of relations among States, which cannot be directly invoked by citizens; as such it has a highly discretionary nature. Consular protection, instead, concerns the support and assistance of a State to its nationals abroad. It is an administrative function with a more limited discretionary character which is provided – usually at the request of concerned citizens, who have a specific right for this purpose – by the consular authorities, and in certain special circumstances, even by diplomatic authorities⁶⁴.

Having in mind that the two types of international protection are clearly different mechanisms of protection of citizens, involving different levels of foreign relations⁶⁵ it is understandable that the EU countries condition the eventual transfer of diplomatic sovereignty to the Union to firstly establishing an effective common foreign policy, also covering the issues under consideration. In this regard, it is worth emphasizing that one of the most important innovations of the Treaty of Lisbon specifically concerns the development of a more cohesive foreign policy of the Union. Therefore, on this basis also the “diplomatic” protection provided by diplomatic missions to nationals of other European countries is likely to become a matter of common interest in the future. However, this may take considerable time to realize.

The other type of international protection laid down in the founding Treaties (Arts- 20 and 23 TFEU) – consular protection – has a considerable different nature: it consists of administrative services traditionally ensured by States to their nationals on the territory of other States, under relevant international conventions and bilateral agreements. The

⁶⁴ According to Art. 3 of the Vienna Convention on consular relations, also diplomatic missions can exercise consular functions.

⁶⁵ Diplomatic protection is exercised usually at the inter-States level, while consular protection is exercised at the local level.

only peculiarity of these administrative services is the territory of exercise of this protection, i.e., the foreign countries where they are carried out, which leads to the conclusion that in contrast with the diplomatic protection consular protection involves two sources of sovereign powers, with the discretion laying rather more on the part of the third country than on the exercising State; for the rest, they have a typically administrative nature⁶⁶. Provided that the consent of the State in which the consular activity operates is obtained, this kind of protection involves a rather administrative functionality.

7. Union internal competences in the field of consular and diplomatic protection

Therefore, it is logical that the European Institutions are focusing their efforts on consular protection, as considered above, leaving other initiatives on diplomatic protection to a later period, when the implications of the new European foreign policy based on the Treaty of Lisbon will be better clarified.

In this direction, the need for effective common consular protection is confirmed by both the legal and substantial reasons mentioned above (legal binding value of the Charter of Fundamental Rights, request of protection for the numerous relevant situations occurring in third countries, etc.) and by the relevance of the newly acquired internal as well as external competence of the Union to act in the field on consular and diplomatic protection” under the Treaty of Lisbon. Under the current legal framework, the Union has internal competence to adopt measures in the area of consular and diplomatic protection of Union citizens on the following legal basis:

- Art. 23(2) TFEU expressly provides the Council’s power to adopt by way of special legislative procedure directives at the proposal of the Commission, and after the European Parliament has been consulted.
- Secondly, the Union - the Council jointly with the European Parliament - can adopt regulations by way of ordinary legislative procedure on the basis of Art. 197(2) TFEU with a view to improve the Member States administrative capacity to implement the Union law adopted in this field
- In addition, the Union has competence under the CFSP, Title V, Art. 35 TEU, to adopt Union decisions in conformity with Art. 25 TEU, the importance of this legal basis should not be underestimated in light of the creation of the EEAS

Special consideration is to be given to the issue of administrative cooperation, which is very little known at the moment, despite the considerable implications for this topic and, in general, for the crucial issue of institutional cooperation at Union level, taking into account also the establishment of the EEAS.

According to Art. 197(1) TFEU, *“Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest”*. To determine the meaning of “matter of common interest” in this context, paragraph 2 states that *“The Union may support the efforts of Member States to improve their administrative capacity to implement Union law. Such action may include facilitating the exchange of information and of civil servants as well as supporting training schemes”*.

⁶⁶ The administrative character of the acts performed by consular officials for the citizens results also from the national Reports, see more in Chapter 3, Sections [2.4.2](#) (Relevant case law) and [4.1.2](#) (Remedies against a refusal to provide consular assistance).

A matter becoming “issue of common interest” does not constitute a new matter, “competitor” of the EU and its Member States, but opens the possibility of European intervention to support the States according to the “open method of coordination” pattern. Therefore, in principle, the organisational and procedural autonomy of Member States is maintained, so that the quoted Article continues (second part of paragraph 2): *“No Member State shall be obliged to avail itself of such support. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish the necessary measures to this end, excluding any harmonization of the laws and regulations of the Member States”*.

Therefore the Union may intervene to support operations, especially to ensure that Member States “effectively” implement the Union’s law, since this implementation is “essential for the proper functioning of the Union”. It should be provided that, as in similar cases, the Union can exercise careful supervision of the actual operation of national administrations, using a kind of “*droit de regard*” capable of influencing the administrative operation of the States.

Consular protection is not outside this new context, as a form of administrative activity especially characterized by being provided in a third country’s territory. The fact that consular protection is part of a “matter of common interest” will enhance the European relevance of this question, which, in any case may no longer be the sole interest of the Member States. In particular, compared to the general administrative cooperation, the measures for coordination and cooperation of consular protection will be implemented through the special legislative procedure (with an emphasis on the role of the Council), while those measures for the other forms of administrative cooperation will be adopted through the ordinary legislative procedure.

Moreover, there are already administrative initiatives promoted by the Council, like a Working Group on consular cooperation (known as “COCON”). The Group has developed non-mandatory guidelines to improve the performance of this function, taking into account the “best national practices” (doc. Council 10109, 2 June 2006).

8. Different national rules and guidelines for European Union’s action

The national Reports show that differences between the laws and practices on consular protection in the EU countries exist, although to a lesser extent than expected. In light of the conclusions put forward in the comparative analysis of the national legislations and practices presented in Chapter 3, it is worth underlining that the different practices of consular protection confirm the desirability of a gradual Europeanization of the discipline of consular protection, the alternative being that of violating the “fundamental right” provided for the Union’s nationals in Art. 46 of the Charter due to a passive behavior.

The legal instruments for this Europeanization may be the basic secondary legal instruments (regulations and directives, as revised by the Treaty of Lisbon), or “soft law” instruments as non-binding provisions. In both cases, supporting activities of non-legal nature should be launched, to increase awareness of EU citizens of their “right” to consular protection. These actions include, *inter alia*, the opening of a website dedicated to this matter, the activation of a single emergency phone, the inclusion of a specific indication in new passports issued to Union citizens.

During the discussions prior to the Treaty of Lisbon the option for the second solution, the “soft law”, prevailed. The regulations and directives are both binding, despite their distinct characteristics; therefore, not using these tools appeared a decision dictated by

reason (due to strong opposition from the Member States for Union action taken in this field) and mainly by serious doubts about the existence of a clear legal basis for the Union's binding regulatory action. A "light" legal instrument was preferred by most commentators, as that arising from the "Open method of coordination" provided by the European Council in Lisbon in 2000.

Specifically, the proposals for light interventions have focused on two possible models: the first, consisting of standards of conduct for the Member States, monitored by the European Commission. The second, a sort of code-based self-conduct model by the Member States, in accordance with the guidelines established by the Commission, which, however, has no further powers.

More specifically, the first model involves the definition by the European Commission of standards of conduct for consular protection of EU citizens in third countries so as to ensure common management of the matter in accordance with the highest level of performance. These standards are not formally binding, but allow the Commission to verify their effective observance, and to take any steps to remedy an unequal situation.

With the entry into force of the Treaty of Lisbon, the impediment of the lack of an express competence for the Union to act in this field has been however remedied. On the basis of Art. 23(2) TFEU, the Council can act by way of adopting, through a special legislative procedure, directives and on the basis of Art. 197(2) TFEU the Council together with the European Parliament can adopt regulations, by way of an ordinary legislative procedure. The Lisbon Treaty has clearly increased the role of the Union, with a corresponding decrease of the intergovernmental method.

The use of this legal instruments by the Union – although still conditioned by the States, as resulting from the Council being the principal actor in the special legislative procedure under Art. 23(2) TFEU – will also facilitate developments of an administrative nature, such as wider involvement of the EU delegations, and the use of the "Lead State" procedure in emergency situations, with related positive consequences for coordination among the EU countries.

Chapter Two: National Reports

This Chapter collects together the national reports drafted by the CARE country correspondents.

General characteristic of national Reports

Structure of the Reports

National Reports were drafted, where possible, according to a standard template compiled by the CARE project staff.

This template is structured as follows:

1. Introduction
 - 1.1. Terminology - National acronyms and definitions
2. Legal framework
 - 2.1. International law
 - 2.2. Transposition of international law into national law
 - 2.3. Implementation of European law into national law
 - 2.4. National law
 - 2.5. Documentation of consular protection
 - 2.6. Information to citizens on consular protection
3. Fulfilment of Union obligations under Art. 23 TFEU and statistical data on consular practice
 - 3.1. Contractual framework
 - 3.2. Statistical data on consular practice
4. Consular protection in detail
 - 4.1. Right to consular (and diplomatic) protection
 - 4.2. Assistance in cases of death
 - 4.2.1. Identifying and repatriating remains
 - 4.3. Assistance in cases of serious accident or serious illness
 - 4.4. Assistance in cases of arrest or detention
 - 4.5. Assistance to victims of violent crime
 - 4.6. Relief and repatriation of distressed citizens
 - 4.6.1. Natural disasters
 - 4.6.2. Terrorist acts
 - 4.6.3. Pandemics
 - 4.6.4. Military conflicts
 - 4.6.5. Financial advances
 - 4.7. Consular fees
 - 4.8. Reimbursement of the assisting State
 - 4.9. Case studies, in particular problematic practices
5. Emergency travel document (ETDs)
6. Relevant diplomatic protection
7. Exercise of consular functions for expats
8. Summary
9. List of important documents

The major part of cited national legal instruments are already available in electronic version in the CARE database accessible at the following address:

<http://www.careproject.eu/database>

Sources of information

Reports are mainly based upon the following sources of information:

- Academic literature on international, diplomatic and consular law and practice (it is to be pointed out that the attention devoted to this issue by legal literature varies considerably from country to country)
- Legal information systems offering access to legislation and case law managed both by public and private bodies
- Official reports and public policy documents delivered by competent authorities of member States
- Websites of competent ministries, embassies and consulates, specifically pages dealing with consular services
- Other websites providing relevant information on consular practice
- Interviews with officials of competent ministries and of diplomatic and consular missions abroad
- Internal documents and instructions accessed by Country correspondents but not available for the general public.
- Popular press useful for identifying case studies, specifically problematic practices.

CARE definitions

The following definitions have been considered by Country Correspondents in drafting their reports.

European Union citizen (Article 20 TFEU): “Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.”

Right to consular and diplomatic protection (Article 46 of the Charter of Fundamental Rights, legally binding with the entry in force of the Treaty of Lisbon): “Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.”

Consular protection (international law): exercise of consular functions of a State for citizens according to Article 5 of the Vienna Convention on Consular Relations, Vienna, 1963¹.

¹ *Article 5 (Consular functions)*. - Consular functions consist in:

- (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;

Exercise of consular functions on behalf of a third State (Art. 8 of the Vienna Convention on Consular Relations): “Upon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State.”

Diplomatic protection (international law): protection of nationals according to the “international minimum standard”.

For the purposes of the Draft Articles on Diplomatic Protection, diplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility.²

In the Seventh Report on diplomatic and consular protection, J Dugard sets out the difference between diplomatic and consular protection. Based on the specific

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- (d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
 - (e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;
 - (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
 - (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending States in cases of succession *mortis causa* in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
 - (h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
 - (i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;
 - (j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;
 - (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;
 - (l) extending assistance to vessels and aircraft mentioned in subparagraph (k) of this article, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship’s papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the sending State;
 - (m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

² Art. 1 of the Draft Articles on the Diplomatic Protection. Text adopted by the International Law Commission at its fifty-eighth session, in 2006, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session (A/61/10). Online available at: http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_8_2006.pdf.

characteristics of diplomatic and consular protection³. J Dugard provides a definition of consular protection by using positive and negative interpretative tools, thus:

“There are, however, three structural differences which should act as a guide to the distinction between the two institutions. First, the limited nature of consular functions provided for in the Vienna Convention on Consular Relations of 1963 (hereinafter “Vienna Convention”) compared with the less limited function of diplomats contained in the Vienna Convention on Diplomatic Relations of 1961; second, the difference in level of representation between consular assistance and diplomatic protection; and third, the preventive nature of consular assistance as opposed to the remedial nature of diplomatic protection. Consuls are seriously limited in respect of the action they may take to protect their nationals by article 55 of the Vienna Convention, which provides that consuls “have a duty not to interfere in the internal affairs of that State”. This means, according to Shaw, that “They have a particular role in assisting nationals in distress with regard to, for example, finding lawyers, visiting prisons and contacting local authorities, but they are unable to intervene in the judicial process or internal affairs of the receiving State or give legal advice or investigate a crime”⁴

Diplomatic and consular protection (EU law): exercise of consular functions of any EU Member State for EU citizens (Article 23 TFEU – former Article 20 TEC –) [and its Union citizens’ family members (COM (2006) 712)] on their request according to Article 5 of the Vienna Convention on Consular Relations and Decisions 95/553/EC and 96/409/CSFP; exercise of diplomatic protection in accordance with customary international law; exercise of protection of persons in the event of disasters⁵; within the legal framework as internationally established by multilateral treaties, bilateral treaties, custom or delegation⁶ [exercise of official functions in accordance with international agreements and practice and the laws of receiving State]

Additional working definition: EU Member States are obliged on request of any EU citizen [and its Union citizens’ family members] to exercise consular and diplomatic protection/assistance in the territory of a third country in which the citizens’ Member State is not represented; in particular: (a) assistance in cases of death; (b) assistance in cases of serious accident or serious illness; (c) assistance in cases of arrest or detention; (d) assistance to victims of violent crime; (e) the relief and repatriation of distressed citizens.

Other issues that should also be considered: exercise of official functions, also electronically (e-government) in accordance with international agreements and practice and the laws of the receiving State, in particular: issuing passports,

³ J Dugard uses the international concept of consular assistance opposite to diplomatic protection. However, he does not seem to understand a fundamental difference between *assistance* and *protection* as regards consular functions. This point is important as regards the allegations of certain of the Member States that have different national understandings of the concepts of consular assistance and protection.

⁴ Seventh report on diplomatic protection by John Dugard, Special Rapporteur, 7 March 2006, A/CN.4/567, p. 9.

⁵ In 2007, the International Law Commission has decided to include the topic in its programme of work and to appoint Mr. Eduardo Valencia-Ospina as Special Rapporteur.

⁶ See for the question of delegation the analysis of the Fifth report on diplomatic protection by Mr. John Dugard, Special Rapporteur, International Law Commission, Fifty-sixth session, Geneva, UN-Doc. A/CN.4/538, 4 March 2004, p. 4 et seq. and Torsten Stein, *Interim Report on Diplomatic Protection under the European Union Treaty*, International Law Association, Report of the Seventieth Conference (New Delhi, 2002), p. 277.

travel documents, acting as notary and civil registrar and in capacities of a similar kind, performing certain functions of an administrative nature, transmitting judicial and extrajudicial documents or executing rogatory letters or commissions to take evidence for the courts of the sending State, establishing a polling station or providing assistance for voting in elections of the sending State.

Reference documents at European level

The following documents from the European Union legal context were considered as relevant for carrying out the CARE National Reports

Legislation

- Treaty on the Functioning of the European Union (1/12/2009) - Article 20
- Treaty on the Functioning of the European Union (1/12/2009) - Article 23
- Treaty on European Union (1/12/2009) - Article 3(5)
- Treaty on European Union (1/12/2009) - Article 35
- Charter of Fundamental Rights of the European Union (7/12/2000) - Article 46
- 95/553/EC: Decision of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations
- 96/409/CSFP: Decision of the Representatives of the Governments of the Member States, meeting within the Council of 25 June 1996 on the establishment of an emergency travel document

Case Law

- Judgment of the Court of First Instance (Second Chamber) of 12 July 2006. *Chafiq Ayadi v Council of the European Union*. Common foreign and security policy - Restrictive measures taken against persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban - Competence of the Community - Freezing of funds - Fundamental rights - Jus cogens - Review by the Court - Action for annulment. Case T-253/02. - Judgment - 12/07/2006
- Judgment of the Court of First Instance (Second Chamber) of 12 July 2006. *Faraj Hassan v Council of the European Union and Commission of the European Communities*. Common foreign and security policy - Restrictive measures taken against persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban - Competence of the Community - Freezing of funds - Fundamental rights - Jus cogens - Review by the Court - Action for annulment and damages. Case T-49/04. -
- Judgment of the Court (Grand Chamber) of 16 November 2004. *Lili Georgieva Panayotova and Others v Minister voor Vreemdelingenzaken en Integratie*. Reference for a preliminary ruling: Rechtbank te 's-Gravenhage - Netherlands. Association Agreements between the Communities and, respectively, Bulgaria, Poland and Slovakia - Right of establishment - National legislation under which applications for full residence permits with a view to establishment are rejected without examination where the applicant lacks a temporary residence permit. Case C-327/02
- Judgment of the Court of First Instance (First Chamber) of 6 July 1995. - *Odigitria AAE v Council of the European Union and Commission of the European Communities*. - Non-contractual liability - Omission of the Commission - Causal link - Applicant's fault - Duty to provide diplomatic protection. - Case T-572/93. -

Other documentation

- Measures implementing protection for EU citizens by diplomatic and consular representation (10107/95) - Decision of the representatives of the Governments of the Member States, meeting within the Council, 19/12/1995
- Council of the European Union - Guidelines on consular protection of EU citizens in third countries (10109/06), 02/06/2006
- Council of the European Union - Guidelines on consular protection of EU citizens in third countries - rev. 2 (10109/2/06), 26/06/2006
- Green Paper - Diplomatic and consular protection of Union citizens in third countries (COM/2006/712 final), 28/11/2006
- Opinion of the European Economic and Social Committee on the Green Paper on diplomatic and consular protection of Union citizens in third countries COM(2006) 712 final, 14/03/2007
- Summary report of Public hearing of 29 May 2007 on the Green Paper on diplomatic and consular protection of Union citizens in third countries, 29/05/2007
- Lead State Concept - Note from Secretariat of the Council - 12.06.2007
- Working document on diplomatic and consular protection for citizens of the Union in third countries - European Parliament Working Document, 13/06/2007
- Report on the Green Paper: Diplomatic and consular protection of Union citizens in third countries - European Parliament Report, 22/11/2007
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Effective consular protection in third countries: the contribution of the European Union - Action Plan 2007-2009 - Communication from the Commission, 05/12/2007
- Accompanying document to the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee - Effective consular protection in third countries: the contribution of the European Union - Action Plan 2007-2009 - Summary of the Impact Assessment (SEC/2007/1601) - Commission staff working document, 05/12/2007
- Accompanying document to the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee - Effective consular protection in third countries: the contribution of the European Union - Action Plan 2007-2009 - Impact Assessment (SEC/2007/1600) - Commission staff working document, 05/12/2007
- Guidelines for further implementing a number of provisions under Decision 95/553, 24/6/2008 (11113/08)
- Own initiative opinion of the Committee of the Regions on Citizens' rights: promotion of fundamental rights and rights derived from European citizenship, 20/10/2008
- European Union guidelines on the implementation of the consular Lead State concept, 1/12/2008
- Consular protection of citizens of the European Union in third countries (debate) - Debates of the European Parliament – 4/2/2009
- Council of the European Union, Common practices in consular assistance and crisis coordination - "I/A" item note – 9/6/2010
- European Commission, EU citizenship Report 2010 - Dismantling the obstacles to EU citizens' rights – 27/10/2010

- Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee under Article 25 TFEU On progress towards effective EU Citizenship 2007-2010 – 27/10/2010

Reference documents at international level

The following documents from the International legal context were considered as relevant for carrying out CARE's National Reports

- International agreement concerning the conveyance of corpses (Berlin 10/2/1937)
- Vienna Convention on Diplomatic Relations, Vienna, 18 April 1961
 - Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning the Compulsory Settlement of Disputes, Vienna, 18 April 1961
 - Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning Acquisition of Nationality, Vienna, 18 April 1961
- Vienna Convention on Consular Relations, Vienna, 24 April 1963
 - Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes, Vienna, 24 April 1963
 - Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality, Vienna, 24 April 1963
- European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers (ETS 63)
- European Agreement on the Transfer of Corpses, 1973 (ETS 80)

List of national correspondents

The national reports have been drafted by the following country correspondents. A brief profile of each of them is available in [Annex II](#).

Austria	Erich Schweighofer
Belgium	Stefaan Smis
Bulgaria	Vesselin Paskalev and Evgeni Tanchev (with the contribution of Nikolai Dobrev)
Cyprus	Aristoteles Constantinides and Constantinos Combos
Czech Republic	Filip Křepelka
Denmark	Astrid Kjeldgaard Pedersen
Estonia	Renè Vark
Finland	Lotta Viikari and Johanna Tornberg
France	Marie Gautier Melleray and Catherine Gauthier
Germany	Matthias Hartwig and Julian Nowag
Greece	Photini Pazartzis
Hungary	Eszter Kirs
Ireland	Clive R. Symmons
Italy	Vincenzo Ferraro
Latvia	Kristine Kruma
Lithuania	Saulius Katuoka
Luxembourg	Florence Giorgi
Malta	Patricia Cassar Torregiani and Simone Borg
Poland	Pawel Czubik and Pawel Filipek
Portugal	Patricia Jeronimo
Romania	Madalina Bianca Moraru (with the contribution of Victor Alistar)
Slovakia	Katarina Galdunova
Slovenia	Vasilka Sancin
Spain	Susana de la Sierra and Juan Jorge Piernas Lopez
Sweden	Fia Ramteen and Anna Sandström
The Netherlands	Annemarieke Vermeer-Künzli
United Kingdom	Craig John Barker and Matthew Garrod



Austria - Österreich (AT)

1. Introduction

This report contains the legal framework and national practice of Austria on consular and diplomatic protection as of 30 June 2010.

Austria can be considered to be a Member State where comprehensive information can be located on the national legal framework and practice on consular and diplomatic protection.

The basis of the report is: handbooks on international law and consular practice in Austria, the official legal information system, RIS *Rechtsinformationssystem des Bundes*¹, the website of the Austrian Ministry for European and International Affairs² and, the most important source, interviews with officials from this Ministry and related internal documents³.

1.1. Terminology: National acronyms and definitions

Österreichische Konsularpraxis: Arbeitsdokument über Österreichische Konsularpraxis (Working Document on Austrian Consular Practice), ed. by Erich Schweighofer & Anton Geist (2009).

BMEIA: Bundesministerium für Europäische und Internationale Angelegenheiten (Austrian Ministry of European and International Affairs).

Dienstanweisung: Interne Dienstanweisung für den konsularischen und diplomatischen Dienst (Internal guideline for consular and diplomatic services), Austrian Ministry of European and International Affairs, Vienna.

BMEIA Bürgerservice: Austrian Ministry of European and International Affairs (Citizens Service): unit of the Foreign Ministry for citizens support.

BMEIA Bericht [year]: *Österreichischer Außenpolitischer Bericht* (Austrian Foreign Policy Report).

VfGH: Verfassungsgerichtshof (Austrian Constitutional Court).

VwGH: Verwaltungsgerichtshof (Austrian Administrative Court).

OGH: Oberster Gerichtshof (Austrian Supreme Court).

¹ www.ris.bka.gv.at

² www.bmeia.gv.at

³ This report is based on the [Working Document](#) on Austrian Consular Practice (compiled by Erich Schweighofer and Anton Geist, Vienna 2009) [available in the CARE database], interviews with officials of the Austrian Ministry for International and European Affairs, Vienna, the documentation in the CARE database on Austrian practice and other related documents and literature, and the web of the Citizen Service <http://www.bmeia.gv.at/aussenministerium/buergerservice.html>.

Special thanks are due to Mrs. Elisabeth Tichy-Fisslberger, Director for Legal and Consular Affairs, Mr. Axel Wech, head of the “Citizen Service” unit and Mr. Andreas Sogogyi, deputy head of the “Citizen Service” unit.

2. Legal framework

Austria's legal framework consists of multilateral treaties to which Austria is a contracting party; bilateral treaties; obligations under the EU treaties; informal arrangements; State policy and practice.⁴

So far, no basic right to consular or diplomatic protection has been established under national laws.

2.1. International law

Austria is/is not a party to the following multilateral conventions:

- Vienna Convention on Consular Relations: since 12 July 1969 (BGBl. (Federal Gazette) 318/1969). No reservations have been made.
 - o Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes: since 12 July 1969 (BGBl. (Federal Gazette) 318/1969). No reservations have been made.
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80): not a party.

Austria is not a party to other multilateral international treaties on consular protection.

Austria has concluded about 10 treaties on consular protection (see [Section 9](#)). Some older treaties on Friendship, Trade and Consular Relations also contain provisions on consular protection.

Formal agreements on consular and diplomatic assistance exist with Hungary and Switzerland⁵. An exchange of notes has specified the assistance between Austria and Switzerland for certain countries: Libreville - Gabon, Kuta - Indonesia/Bali, Niamey - Niger, N'djamena - Chad.

Informal agreements on consular protection exist also with Slovenia and Croatia.

With some countries, representation agreements for visas have been established, e.g., Malta⁶.

Austria regards the resulting mutual assistance as good practice.

2.2. Transposition of international law into national law

In Austria, **international law is regarded as being an integral part of federal national law** (Article 9 para. 1 of the Austrian Constitution); thus, in general, international treaties are directly applicable.

2.3. Implementation of European law into national law

European rules are directly applicable; thus Art. 23 TFEU⁷ and Decision 95/553/EC are directly applicable.⁸ Section 18 para. 1 (1) of the Federal Law on the Functions and

⁴ Austrian literature on consular practice:

- Köck, Heribert Franz, Die Organe des völkerrechtlichen Verkehrs. In: *Neuhold, Hanspeter, Hummer, Waldemar and Schreuer, Christoph*, Österreichisches Handbuch des Völkerrechts, Manz, Wien 2004, p. 324 et seq., in particular p. 334-338;

-Wojda, Alexander, Das österreichische Konsularrecht, Eine rechtsdogmatische Betrachtung der Aufgaben österreichischer Vertretungsbehörden in Konsularangelegenheiten, Wien 1998.

⁵ Not published in the BGBl. (Federal Gazette).

⁶ Agreement between the Republic of Austria and the Republic of Malta on the representation of the Republic of Malta by Austrian consular authorities in granting visas for transit and short stays of 7 May 2004, BGBl. (Federal Gazette) III 161/2005.

the Organisation of the Foreign Service – Statute (Federal Law Gazette I No. 129/1999) states the duty of foreign service officials to provide consular protection to EU-citizens where required⁹.

For practical details, circulars to Austrian representations have been enacted. These circulars are not publicly available.

Decision 96/409/CSFP was transposed by section 96 of the Austrian Aliens Act [*Fremdenpolizeigesetz* 2005, BGBl. (Federal Gazette) I 100/2005].

2.4. National law

In Austria, the Vienna Convention on Consular Relations constitutes the legal basis for consular services. No implementing national law exists so far.

A **draft of a consular act** has been prepared by the Austrian Ministry on European and International Affairs. After internal discussions, it seems to be that the draft of a consular act will not be pursued for the time being. European developments may activate discussions again. The draft has not been made publicly available.

For consuls and diplomats, an **Internal guideline** with amendments (*Dienstanweisung*) has been issued by the Austrian Ministry for European and International Affairs. This internal guideline is not publicly available.

Consular practice is considered as a service to the citizen (Foreign Ministry as a service organization [*Außenministerium als Serviceorganisation*]). **The service is rendered as a policy commitment of the Foreign Ministry but not in fulfilling a legal obligation under Austrian law.**

Services can be clustered into three main categories: **(i)** consular services (e.g., arrests, travel documents, assistance in cases of death or illness etc.), **(ii)** assistance in catastrophes, pandemics or armed conflicts and **(iii)** support for Austrian expats (*AuslandsösterreicherInnen*).

There is no right for citizens to appeal in case of refusal of consular protection.

2.5. Documentation of consular protection

Recent Austrian Practice in International Law has been compiled and edited by Peter Fischer, Gerhard Hafner, Gerhard Loibl and Stephan Wittich. The practice is published in the journals *Zeitschrift für öffentliches Recht und Völkerrecht* (ZÖRVR) and later in the *Austrian Review of International and European Law* (ARIEL).

This compilation of State practice contains references and summaries on consular protection.

Further, relevant documents on the case law of the Constitutional Court, the Administrative Court and the Supreme Court are available on the official legal information system *Rechtsinformationssystem des Bundes* (www.ris.bka.gv.at).

2.6. Information to citizens on consular protection

For Austrian citizens, the **website of the Ministry** provides a summary of guideline enacted by the Austrian Ministry for European and International Affairs for consuls and

⁷ Former Article 20 EC was published by Austria in the Federal Law Gazette III No.86/1999 and is directly applicable.

⁸ Decision 95/553/EC was also published in BGBl. (Federal Gazette) 254/2002 and 259/2002.

⁹ Section 18 para. 1 (1) of the Federal Law on the Functions and the Organisation of the Foreign Service states: "die Leistung von konsularischem Schutz und Beistand für die im Amtsgebiet aufhaltenden österreichischen Staatsbürger - gegebenenfalls auch für andere EU-Bürger - bei Gefahr im Verzug und".

diplomats. The [Working Document on Austrian Consular Practice](#) provides a concise documentation on the website and interviews¹⁰.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Austrian bilateral agreements with third countries do not include provisions protecting Union citizens working and living in third countries.

Austria has not informed third countries about the practice of extending protection to Union citizens (Art 8 Vienna Convention on Consular Protection).

Austrian bilateral agreements with third countries do not include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

In general, Austria does not extend consular protection to Union citizens' family members who are not nationals of a Member State. **Exceptions exist in cases of evacuations.** Until now, Austria has not informed third countries of this practice.

Austria has not started negotiations concerning agreements with third countries that include provisions protecting Union citizens working and living in third countries.

Austria has not started negotiations concerning agreements with third countries that include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

3.2. Statistical data on consular practice

Austria offers extensive consular services to its citizens. Further, Austria has provided assistance to Union citizens.

Statistical data are reported in the annual report and on the website (*Konsularstatistik*)¹¹. Data are not very detailed.

According to informal assessments of the Austrian Foreign Ministry, serious under reporting seems to exist in consular cases as no formal files have to be established and many cases of first support are not documented.

Statistical data:

2009¹².

Consular acts: 129.684 (an increase of 10% in comparison to 2008)

Budget for emergency situations: € 240.000

No further details available.

¹⁰ See [Arbeitsdokument über Österreichische Konsularpraxis](#) (Working Document on Austrian Consular Practice), ed. *Erich Schweighofer & Anton Geist* (2009); hereinafter: *Konsularpraxis*.

¹¹ Website Austrian Ministry of European and Foreign Affairs; <http://www.bmeia.gv.at/aussenministerium/buergerservice/konsularstatistik.html> (last visited: 31 July 2010).

¹² Website Austrian Ministry of European and Foreign Affairs; <http://www.bmeia.gv.at/aussenministerium/buergerservice/konsularstatistik.html> (last visited: 31 July 2010).

2007¹³:

Consular acts: 114.980 (an increase of 17% in comparison to 2006)

Emergency situations (accident, death, illness): 2.570

Budget for emergency situations: € 240.000

Life threatening situations: 14

Issue of new passports: 43.458 (due to the invalidity of the first set of EU conform passports that had been issued in 1996)

Notarisations: 27.585

Nationality affairs: 11.691

Legal protection: 1.469

2006:

Consular acts: 98.274

Emergency situations (accident, death, illness): 2.680

Budget for emergency situations: € 240.000

2005:

Emergency situations (accident, death, illness): 2.680

Budget for emergency situations: € 240.000

Consular protection for EU citizens: no data available

Consular protection for Austrian citizens received from other Member States' embassies and third countries in the last 3 years: no data available

Austria has experienced problems when providing assistance to Union citizens, in particular concerning support to family members and relating questions of visa.

4. Consular protection in detail

The **network for consular services** consists of the Austrian representations (embassies, consulates, and honorary consulates), a Citizen Service in Vienna (*Bürgerservice*), available 24 hours/7 days, some representations of third States (in particular Switzerland and Hungary), and the representations of other EU Member States. **The degree of involvement of representations of other States varies according to diplomatic practice and local co-operation frameworks.**

The Website of the Citizen Service contains all relevant information, in particular also travel advices on possible risks in particular countries (epidemics, conflicts, natural disasters, etc). A list of travel warnings is also available at the website of the MFA.¹⁴ Further, a security and distress card (*Sicherheits- und Notfallkarte*) has been presented in 2009.

The Austrian consular network consists of 81 bilateral embassies, 13 general consulates, 6 representations at International Organisations, and 6 culture institutes. 280 honorary consuls are supporting the work of the professional consular (and diplomatic) service. 15 Co-ordination Offices for Development and 9 Austria Institutes (*Österreich-Institute*) work in the special tasks of development and cultural co-operation,

¹³ Website Austrian Ministry of European and Foreign Affairs;
<http://www.bmeia.gv.at/aussenministerium/buergerservice/konsularstatistik.html> (last visited: 31 October 2009).

¹⁴ Website Austrian Ministry of European and Foreign Affairs;
<http://www.bmeia.gv.at/aussenministerium/buergerservice/reisewarnungen.html> (last visited: 31 July 2010).

respectively. **Only the 81 bilateral embassies, 13 general consulates and 280 honorary consuls are providing consular services.** More details on the network can be found at the website of the Citizen Service.¹⁵ A list of all representations can be found in the Austrian Report on Foreign Policy¹⁶ and in a list of the Austrian Foreign Ministry.¹⁷

A restructuring of the network has been decided. Representations in Baku (embassy) and Frankfurt am Main (general consulate) are opened and representations in Muskat (Maskat) (embassy), Rio de Janeiro, Hamburg and Cape Town (Kapstadt) (general consulates) are closed.

A formal agreement on consular and diplomatic assistance exists only with Hungary and Switzerland. The co-operation between Austria and Switzerland has been specified for certain countries: Libreville - Gabun, Kuta - Indonesia/Bali, Niamey - Niger, N'djamena - Chad. Informal agreements on consular protection exist also with Slovenia and Croatia.

Austria is – jointly with Denmark – a “Lead State” for Bhutan. No particular practice has been reported so far.

Co-sharing arrangements are followed on a pragmatic basis. Resources are pooled with Hungary, Czech Republic and Switzerland in Podgorica (Montenegro).

In general, **support is considered as a help for self-help.** The Foreign Ministry provides first support and enables citizens to organize appropriate assistance, e.g., in providing contacts to professionals (e.g., doctors, solicitors, travel agencies, airlines, air ambulances). **In general, costs have to be borne by citizens; only “first support” is free of charge** (see [Consular Fees Act](#) [*Konsulargebührengesetz 1992*]¹⁸). Notarisations (*Beglaubigungen*) are guided by a special Regulation.¹⁹ **Rules of good practices should be followed by Austrian citizens (e.g., keep a list of important dates for emergencies, inform consulates of residence).**

Special assistance is provided in case of emergencies (e.g., catastrophes, pandemics or armed conflicts). The Foreign Ministry organizes evacuations if personal repatriation is not considered feasible. Rules of good practices should be followed by Austrian citizens (e.g., inform consulates of residence, keep sufficient supplies of food; keep travel equipment for short-notice evacuation, inform about traffic infrastructure etc.). Costs have to be covered by the Austrian citizens. No liability is taken for evacuation measures.

¹⁵ Website Austrian Ministry of European and Foreign Affairs;

<http://www.bmeia.gv.at/aussenministerium/buergerservice/oesterreichische-vertretungen.html>.

¹⁶ Austrian Ministry of European and International Affairs, Report on Foreign Policy 2009, p. 252 et seq.;

[http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-](http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-Aussenpolitik_Zentrale/Aussenpol._Berichte/Aussenpolitischer_Bericht_2009.pdf)

[Aussenpolitik_Zentrale/Aussenpol._Berichte/Aussenpolitischer_Bericht_2009.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-Aussenpolitik_Zentrale/Aussenpol._Berichte/Aussenpolitischer_Bericht_2009.pdf) (last visited: 31 July 2010).

¹⁷ List of Austrian Representations (*Verzeichnis der Österreichischen Vertretungsbehörden*),

http://www.bmeia.gv.at/fileadmin/user_upload/oracle/oe_vertretungen_de.pdf (last visited: 31 July 2010).

¹⁸ Federal Act on the collection of fees and reimbursement of expenses for official acts of Austrian representations in consular affairs (*Bundesgesetz über die Erhebung von Gebühren und den Ersatz von Auslagen für Amtshandlungen österreichischer Vertretungsbehörden in konsularischen Angelegenheiten* (*Konsulargebührengesetz 1992 - KGG 1992*), BGBl. (Federal Gazette) 100/1992, as amended BGBl. I 129/2009).

¹⁹ Regulation of the Austrian Minister of Foreign Affairs of 16 March 2004 concerning certifications by Austrian representations abroad (*Verordnung des Bundesministers für Auswärtige Angelegenheiten vom 16. März 1984 betreffend Beglaubigungen durch österreichische Vertretungsbehörden im Ausland*), BGBl. (Federal Gazette) 140/1984.

Support for Austrian expats (*AuslandsösterreicherInnen*) is given a particularly strong focus. Austrian representations provide assistance for acts as notary and civil registrar and in capacities of a similar kind; certain functions of an administrative nature, transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the Austrian courts and support for voting in Austrian elections. Assistance depends on international treaties and diplomatic practice.

More details can be found below and in the related [working document on Austrian Consular Practice](#).

Austrian practice is compiled in the Internal Guideline on Consular and Diplomatic Services of the Ministry for European and International Affairs and the website. A Working Document on Austrian Consular practice has been prepared.

Very few relevant cases on consular protection exist; they concern only privileges and immunities of consuls.²⁰

4.1. Right to consular (and diplomatic) protection

In Austria, no right to consular (and diplomatic) protection exists. Consular (and diplomatic) protection is provided only for Austrian and EU nationals, based on administrative practice²¹. **In general, consular protection is not extended to family members who are not nationals of a Member State. It is also not extended to other categories (e.g., recognized refugees, stateless persons or persons with resident permits).**

4.2. Assistance in cases of death

Austrian diplomatic or consular missions inform the national authorities which contact the next-of-kin.²²

Austrian diplomatic or consular missions – with the consent of the next-of-kin - assist in obtaining a death certificate and in arranging for the body to be buried, cremated or repatriated to the home country.

Next-of-kin are asked to provide a deposit for covering the costs of the funeral etc.

4.2.1. Identifying and repatriating remains

Austrian diplomatic or consular missions inform the national authorities which contact the next-of-kin.²³

Austrian diplomatic or consular missions – with the consent of the next-of-kin – assist in obtaining a death certificate and in arranging for the body to be buried, cremated or repatriated to the home country.

Next-of-kin may be asked to provide a deposit for covering the costs of the funeral etc.

4.3. Assistance in cases of serious accident or serious illness

Austrian diplomatic or consular missions inform next-of-kin, arrange visits or give advice on reputable clinics and doctors.²⁴ Austrian representations maintain a network

²⁰ The CARE database collects decisions that concern only diplomatic and consular immunities and privileges. No judicial decisions exist concerning proper consular services.

²¹ [Konsularpraxis](#), p. 5.

²² [Konsularpraxis](#), p. 28.

²³ [Konsularpraxis](#), p. 28.

²⁴ [Konsularpraxis](#), p. 23.

of solicitors, doctors, credit card organizations and banks in order to enable the citizen to help itself with assistance of competent professionals. Financial advances are granted only in very exceptional circumstances.

A medical evacuation is subject to the consent of the national authority and sufficient financial resources.

4.4. Assistance in cases of arrest or detention

Upon notification by the authorities of the receiving State, the Austrian diplomatic or consular missions inform – with the consent of the citizen – the national authorities. If possible the detainee is visited.²⁵

The Austrian diplomatic or consular missions monitor the trial in order to ensure compliance with international law (treatment of foreigners, in particular the principle of fair trial) and domestic law.

Support in finding appropriate legal advice is provided. The costs have to be borne by the detainee (or his family and friends). In case of a detainee without means, the costs for legal assistance have to be covered by the receiving State according to national law and international principles.

4.5. Assistance to victims of violent crime

Austrian diplomatic or consular missions **provide information** about medical assistance and legal advice²⁶.

Support is granted only in exceptional cases.

4.6. Relief and repatriation of distressed citizens

Austrian diplomatic or consular missions provide advice and assistance.²⁷ In case of catastrophes or armed conflicts, Austrians should contact the next representation (Austrian, Swiss or that of an EU Member State). Evacuations are organized if required. Costs have to be covered by the Austrian citizens; financial advances are possible. Austrian citizens should follow the rules of good practice in case of emergencies.

Evacuations are organized in case of urgent necessity (e.g., Lebanon 2006).

4.6.1. Natural disasters

Austrian consular and diplomatic authorities immediately establish close contacts with citizens in order to provide support and, if required, organize evacuations as soon as possible (e.g., Tsunami December 2004, Katrina August 2005, Haiti January 2010).²⁸ In Haiti, most Austrians were officials of International Organisations (in particular the UN) that provided appropriate support.

4.6.2. Terrorist acts

In case of a terrorist attack, Austrian consular and diplomatic authorities contact local authorities in order to provide support for citizens if they are involved (no Austrian

²⁵ [Konsularpraxis](#), p. 30.

²⁶ [Konsularpraxis](#), p. 21

²⁷ [Konsularpraxis](#), p. 33.

²⁸ [Konsularpraxis](#), p. 33.

victims: London 2005 or Sharm el-Sheik 2005).²⁹ Support to next-in-skin of possible victims is also given.

In case of rape, Austrian consular and diplomatic authorities intervene and negotiate, in co-operation with the local authorities, the release of Austrian citizens (examples: Yemen 2005, Mali 2008). Costs are covered by Austria; recovery is only asked for in the case of gross negligence.

Sharm el-Sheik bombings 2005:

Reimbursement of costs was not asked from Austrian citizens or citizens of other EU Member States.

4.6.3. Pandemics

Austrian consular and diplomatic authorities contact local authorities in order to provide support to citizens if involved.³⁰

4.6.4. Military conflicts

Austrian consular and diplomatic authorities contact local authorities in order to provide support to citizens if involved.³¹ Evacuations are organized immediately if necessary.

Lebanon conflict - July/August 2006:

Co-operation between EU Member States has worked exemplary.³² Due to efficient sharing of transport resources (land transport, ship and military aircraft) between EU Member States, Austria has evacuated 328 Austrians and 143 citizens of other EU Member States.

Reimbursement of costs was not asked from Austrian citizens or citizens of other EU Member States.

Chad conflict - February 2008:

A special co-operation with France was established.

Reimbursement of costs was not asked from Austrian citizens or citizens of other EU Member States.

Georgia conflict - August 2008:

A special co-operation with Germany was established.

Reimbursement of costs was not asked from Austrian citizens or citizens of other EU Member States.

4.6.5. Financial advances

Financial advances and repatriation to the home country will be provided only at utmost urgency.³³

Financial advances to EU citizens: So far, a standard practice has not been established. In general, consent of the other Member State is required for financial advances, which usually means that a deposit or a firm commitment for recovery of costs is obligatory. In principle, payment is given only on a pro-rate basis.

²⁹ [Konsularpraxis](#), p. 33.

³⁰ [Konsularpraxis](#), p. 33.

³¹ [Konsularpraxis](#), p. 33.

³² Austrian Report on Foreign Policy (Österreichischer Außenpolitischer Bericht) 2006, p. 107. Website: http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-Aussenpolitik_Zentrale/4723_aussenpolitischer_bericht_2006.pdf (last visited: 31 October 2009).

³³ [Konsularpraxis](#), p. 24.

4.7. Consular fees

In general, other than costs for first service have to be borne by the citizen. [see [Consular Fees Act](#) (*Konsulargebührengesetz 1992*)³⁴]. Notarisations (*Beglaubigungen*) are guided by a special Regulation.³⁵ Rules of good practices should be followed by Austrian citizens (e.g., keep a list of important dates for emergencies, inform consulates of residence).

Costs in connection with measures to protect Austrian citizens abroad for other than humanitarian or other public interest purposes in situations into which these persons have placed them culpable, have to be reimbursed if exceeding € 10.000 per person. Reimbursement of expenses between € 10.000 and 50.000 per person has to be paid only if the person has gone grossly culpable in the above situation. **Gross culpability** is considered if the citizen does not take into account generally available information about dangerous situations (e.g., the website of the Foreign Ministry on travel advice). The Minister for European and International Affairs has discretion to decide if such actions should be taken.

4.8. Reimbursement of the assisting State

Payment of fees and reimbursement of costs is regulated by the *Konsulargebührengesetz 1992* (Consular Fees Act 1992). **Assistance by the Austrian Foreign Service with man-power is considered as administrative assistance and no reimbursement is asked.** For most consular services, a fee has to be paid according to the annex of the Consular Fees Act.

So far, no payment has been asked from nationals of EU Member States.

4.9. Case studies, in particular problematic practices

No detailed information is available. The BMEIA has stated that practice works quite well and more rules may not be very helpful.

5. Emergency travel document (ETD)

In case of loss of passport, citizens are provided with an Emergency Travel Document (ETD) according to EU rules, an Emergency Travel Document according to Austrian rules or a new passport if time allows.³⁶ All Austrian diplomatic missions and general consulates are equipped with ETDs.

Honorary consuls are not deemed competent to issue travel documents.

Practice is working sufficiently well; no problems are reported. Each year, about 100 ETDs are issued.

³⁴ Federal Act on the collection of fees and reimbursement of expenses for official acts of Austrian representations in consular affairs, [*Bundesgesetz über die Erhebung von Gebühren und den Ersatz von Auslagen für Amtshandlungen österreichischer Vertretungsbehörden in konsularischen Angelegenheiten* (*Konsulargebührengesetz 1992 - KGG 1992*)], BGBl. (Federal Gazette) 100/1992, as amended BGBl. I 129/2009.

³⁵ Regulation of the Austrian Minister of Foreign Affairs of 16 March 2004 concerning certifications by Austrian representations abroad (*Verordnung des Bundesministers für Auswärtige Angelegenheiten vom 16. März 1984 betreffend Beglaubigungen durch österreichische Vertretungsbehörden im Ausland*), BGBl. (Federal Gazette) 140/1984.

³⁶ [Konsularpraxis](#), p. 26.

6. Relevant diplomatic protection

In Austria, no explicit legal right to consular (and diplomatic) protection exists.

Consular (and diplomatic) protection is provided only for Austrian and EU-nationals, based on administrative practice. In general, consular (and diplomatic) protection is not extended to family members who are not nationals of a Member State.

7. Exercise of consular functions for expats

Austria has a high number of expats in comparison with its population; about 470.000 Austrians are living abroad (about 5% of the Austrian population); the most expats live in Germany (230.000), Switzerland (40.000), USA (30.300), Republic of South Africa (20.000), Australia and Great Britain (each 15.000), and in Brazil and Argentina (each 11.000).³⁷

It is a major function of the Austrian Foreign Service to support Austrian expats and exercise consular protection. Besides functions not different from those for short-term travelers, the exercise of official functions is of particular importance.

- Passports and travel documents
- Acts as notary and civil registrar and in capacities of a similar kind
- Certain functions of an administrative nature
- Transmitting judicial and extra judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State
- Polling station or other support for voting in elections

Statistical data for such services rendered are not available.

Such functions are exercised, also electronically (e-government) in accordance with international agreements and practice and the laws of the receiving State.

Due to budget cuts, Austria has to close consulates; most recently in Hamburg. The BMEIA still considers the network as sufficiently dense, however, expat organizations (in particular the *AÖWB*), are increasingly concerned about this situation. It is hoped that the European External Service will redress the situation.

As one of the “Europe champions” of e-government, Austria considers a powerful knowledge system as a prerequisite for efficient handling of requests from many EU Member States with different legal rules and practice.

8. Summary

Austria is a party to the most important international treaties on consular relations, it has concluded some bilateral treaties and also maintains informal arrangements. Further co-operations are based on common cultural backgrounds, but also on existing diplomatic and consular networks.

Assistance to EU citizens is provided according to Article 23 TFEU. So far, some but no extensive practice exists. For evacuation actions in international conflicts, the *ad hoc* co-operation between EU Member States has proven to be very helpful.

The legal framework has not been extended by bilateral arrangements to cover the delegation of consular or diplomatic protection according to Article 23 TFEU, or to provide support for family members who are not nationals of a Member State.

Austria focus particularly on consular support for expats.

³⁷ [Konsularpraxis](#), p. 36.

9. List of important documents

International treaties and related national instruments

1.

Title: Wiener Übereinkommen über konsularische Beziehungen

Publication reference: BGBl. (Federal Gazette) 318/1969

Entry into force: 12.07.1969

English title: Vienna Convention on Consular Relations, Vienna, 24 April 1963

2.

Title: Wiener Übereinkommen über konsularische Beziehungen Fakultativprotokoll über die obligatorische Beilegung von Streitigkeiten

Publication reference: BGBl. (Federal Gazette) 318/1969

Entry into force: 12.07.1969

English title: Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes, Vienna, 24 April 1963

3.

Title: Abkommen zwischen der Bundesministerin für auswärtige Angelegenheiten der Republik Österreich und dem Außenminister der Republik Ungarn über die Zusammenarbeit an den Auslandsvertretungen

Publication reference: BGBl. (Federal Gazette) III 14/2006

Entry into force: 20.12.2005

English title: Agreement between the Austrian Minister of Foreign Affairs and the Hungarian Minister of Foreign Affairs concerning co-operation of foreign representations

Summary: Co-operation of Austrian and Hungarian diplomatic and consular representations

4.

Title: a) Abkommen zwischen der Bundesregierung der Republik Österreich und den Regierungen der Russischen Sozialistischen Förderativen Sowjet-Republik und der Ukrainischen Sozialistischen Sowjet-Republik;

b) Notenwechsel zwischen der Republik Österreich und der Union der sozialistischen Sowjetrepubliken vom 8. September 1923 über die Ausdehnung des Regierungsabkommens vom 7. Dezember 1921 auf das Gebiet der Union der sozialistischen Sowjetrepubliken

c) Konsularvertrag zwischen der Republik Österreich und der Union der Sozialistischen Sowjetrepubliken 1960

d) Protokoll zum Konsularvertrag zwischen der Republik Österreich und der Union der Sozialistischen Sowjetrepubliken 1975

e) Protokoll zum Konsularvertrag zwischen der Republik Österreich und der Union der Sozialistischen Sowjetrepubliken vom 28. February 1959

Publication reference: a) BGBl. (Federal Gazette) 147/1922

b) BGBl. (Federal Gazette) 525/1923

c) BGBl. (Federal Gazette) 525/1923

c) BGBl. (Federal Gazette) 21/1960

d) BGBl. (Federal Gazette) 459/1975

e) BGBl. (Federal Gazette) 257/1994

Entry into force: 14.02.1922

English title: Consular Treaty between the Government of the Republic Austrian and now: Russian Federation

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

5.

Title: a) Konsularvertrag zwischen der Republik Österreich und dem Vereinigten Königreich von Großbritannien und Nordirland

b) Kundmachung des Bundeskanzlers vom 9. Oktober 1975 über die Anwendung des Art. 41 Abs. 2 des Konsularvertrages zwischen der Republik Österreich und dem Vereinigten Königreich von Großbritannien und Nordirland

c) Notenwechsel zwischen dem britischen Botschafter in Wien und dem Bundesminister für Auswärtige Angelegenheiten zur Aufhebung des Art. 40 des österreichisch-britischen Konsularvertrages

Publication reference: a) BGBl. (Federal Gazette) 19/1964, BGBl. (Federal Gazette) 416/1980

b) BGBl. (Federal Gazette) 531/1975

c) BGBl. (Federal Gazette) 460/1980

English title: Consular Treaty between the Government of the Republic Austrian and the United Kingdom of Great Britain and Northern Ireland

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

6.

Title: Abkommen zwischen der Republik Österreich und der Tschechoslowakischen Sozialistischen Republik über konsularische Beziehungen

Publication reference: BGBl. (Federal Gazette) 526/1980, BGBl. (Federal Gazette) 1046/1994

Entry into force: 01.01.1993

English title: Agreement between the Republic of Austria and the Czech Republic on Consular Relations

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

7.

Title: Abkommen zwischen der Republik Österreich und der Tschechoslowakischen Sozialistischen Republik über konsularische Beziehungen (Slowakei)

Publication reference: BGBl. (Federal Gazette) 526/1980, BGBl. (Federal Gazette) 1046/1994

Entry into force: 28.12.1994

English title: Consular Treaty between the Republic Austria and [...] (now: Slovakia)

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

8.

Title: Konsularvertrag zwischen der Republik Österreich und der Volksrepublik Bulgarien

Publication reference: BGBl. (Federal Gazette) 342/1976

Entry into force: 12.07.1976

English title: Consular Treaty between the Republic of Austria and the Bulgarian People's Republic

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

9.

Title: Konsularvertrag zwischen der Republik Österreich und der Ungarischen Volksrepublik

Publication reference: BGBl. (Federal Gazette) 146/1977

Entry into force: 30.04.1977

English title: Consular Treaty between the Republic of Austria and the Hungarian People's Republic

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

10.

Title: Konsularvertrag zwischen der Republik Österreich und der Föderativen Volksrepublik Jugoslawien

Staatennachfolge:

Republik Slowenien

Republik Kroatien [BGBl. (Federal Gazette) 474/1996 (keine Weiteranwendung)]

Bundesrepublik Jugoslawien [BGBl. (Federal Gazette) III 156/1997]

Bosnien und Herzegowina

Ehem. Jugosl. Republik Mazedonien

Republik Montenegro [BGBl. (Federal Gazette) III 124/2007]

Publication reference: BGBl. (Federal Gazette) 378/1968

English title: Consular Treaty between the Republic of Austria and [...] now: Slovenia, Serbia, Bosnia and Herzegovina, Montenegro and Macedonia

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

11.

Title: Konsularvertrag zwischen der Republik Österreich und der Volksrepublik Polen

Publication reference: BGBl. (Federal Gazette) 383/1975

Entry into force: 22.07.1975

English title: Consular Treaty between the Republic of Austria and the People's Republic of Poland

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

12.

Title: Konsularvertrag zwischen der Republik Österreich und der Sozialistischen Republik Rumänien

Publication reference: BGBl. (Federal Gazette) 317/1972

Entry into force: 11.08.1972

English title: Consular Treaty between the Republic Austria and the Socialist Republic of Romania

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

13.

Title: Notenwechsel zwischen dem Bundesstaate Österreich und dem Königreiche Ägypten, betreffend die Verständigung der beiderseitigen Konsulate von den Todesfällen ihrer Konnationalen

Publication reference: BGBl. II Nr. 262/1934

Entry into force: 28.08.1934

English title: Exchange of Notes between the Federal State of Austria and the Kingdom of Egypt concerning the notification of the consulates on both sides on the deaths of the co-nationals

Short summary: Notification on deaths

14.

Title: Abkommen zwischen der Republik Österreich und der Republik Malta über die Vertretung der Republik Malta durch österreichische Vertretungsbehörden hinsichtlich der Erteilung von Visa zur Durchreise und zum kurzfristigen Aufenthalt

Publication reference: BGBl.(Federal Gazette) III 161/2005

English title: Agreement between the Republic Austria and the Republic of Malta enabling Austrian representations to issue visas for transit and short-term entry on behalf of the Republic of Malta

15.

Title: Schweizerisch-Österreichisches Abkommen über die Zusammenarbeit auf konsularischem Gebiet

Publication reference: Not published in Austria; Switzerland: 0.191.111.631

English title: Agreement between Switzerland and Austria on cooperation in consular issues

16.

Title: Abkommen zwischen der Bundesministerin für auswärtige Angelegenheiten der Republik Österreich und dem Außenminister der Republik Ungarn über die Zusammenarbeit an den Auslandsvertretungen

Publication reference: BGBl.(Federal Gazette) III 14/2006

English title: Agreement between the Federal Minister for Foreign Affairs of the Republic of Austria and the Foreign Minister of the Republic of Hungary on co-operation at foreign representations

National legislation

17.

Title: Bundesgesetz über die Erhebung von Gebühren und den Ersatz von Auslagen für Amtshandlungen österreichischer Vertretungsbehörden in konsularischen Angelegenheiten (Konsulargebührengesetz 1992 - KGG 1992)

Publication reference: BGBl. (Federal Gazette) 100/1992, as amended 129/2009

English title: Act on Consular Fees 1992

18.

Title: Verordnung des Bundesministers für Auswärtige Angelegenheiten vom 16. März 1984 betreffend Beglaubigungen durch österreichische Vertretungsbehörden im Ausland

Publication reference: BGBl. (Federal Gazette) 140/1984

English title: Regulation of the Austrian Minister of Foreign Affairs of 16 March 2004 concerning certifications by Austrian representations abroad

19.

Title: Bundesgesetz über Aufgaben und Organisation des auswärtigen Dienstes - Statut

Publication reference: BGBl. (Federal Gazette) 129/1999

English title: Federal Law on Tasks and Organisation of the Foreign Service – Statute

Short summary: The Federal Law on Tasks and Organisation of the Foreign Service – Statute regulates the organisation of the Austrian Foreign Service as well as rights and duties of the staff.

Circulars, internal guidelines

20.

Title: Dienstanweisung für den diplomatischen und konsularischen Dienst, Bundesministerium für Europäische und Internationale Angelegenheiten

Publication reference: Not published

English title: Internal Guideline for diplomatic and consular services; Federal Ministry for European and International Affairs

Websites, reports

21.

Title: Österreichische konsularische Praxis – Arbeitsdokument; Erich Schweighofer und Anton Geist (Hrsg.), Wien 2009

Publication reference: On file with the compilers; CARE database

Date: 2009

English title: Austrian Consular Practice – Working Document; Erich Schweighofer & Anton Geist (Eds.), Vienna 2009

22.

Title: Außenministerium –Bürgerservice

Publication reference: <http://www.bmeia.gv.at/aussenministerium/buergerservice.html> (last visited: 31 October 2009)

English title: Ministry for Foreign Affairs – Citizens' Service

23.

Title: Österreichischer Außenpolitischer Bericht 2006

Publication reference: http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-Aussenpolitik_Zentrale/4723_aussenpolitischer_bericht_2006.pdf (last visited: 31 October 2009)

Date: 2006

English title: Austrian Report on Foreign Policy 2006

24.

Title: Österreichischer Außenpolitischer Bericht 2005

Publication reference: http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-Aussenpolitik_Zentrale/2751_apb_2005.pdf (last visited: 31 October 2009)

Date: 2005

English title: Austrian Report on Foreign Policy 2006

25.

Title: Österreichischer Außenpolitischer Bericht 2007

Publication reference: http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-Aussenpolitik_Zentrale/Aussenpolitischer_Bericht_2007.pdf (last visited: 18 March 2009)

Date: 2007

English title: Austrian Report on Foreign Policy 2007

26.

Title: Österreichischer Außenpolitischer Bericht 2008

Publication reference: http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-Aussenpolitik_Zentrale/Aussenpol._Berichte/Aussenpolitischer_Bericht_2008.pdf (last visited: 31 October 2009)

Date: 2008

English title: Austrian Report on Foreign Policy 2008

27.

Title: Österreichischer Außenpolitischer Bericht 2009

Publication reference: http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-Aussenpolitik_Zentrale/Aussenpol._Berichte/Aussenpolitischer_Bericht_2009.pdf (last visited 31 July 2010)

Date: 2009

English title: Austrian Report on Foreign Policy 2009

Case law

28.

Title: Constitutional Court (VfGH) B399/91, 11 March 1992 – Treaty on Friendship, Trade and Consular Relations Austria – USA (Freundschafts-, Handels- und Konsularvertrag Österreich – USA)

Short summary: This decision concerns only the inviolability of property according to Article 5 of the Basic State Act (Staatsgrundgesetz).

29.

Title: Administrative Court (VwGH) 2000/11/0044, 14 March 2000, immunities according to Article 71 para. 1 Vienna Convention on Consular relations

Short summary: This decision refuses immunities for a honorary consul in case of exceeding speed limits.

30.

Title: Administrative Court (VwGH) 2000/03/0187, 4 July 2005; classification of the consulate as part of the territory of the receiving State

31.

Title: Administrative Court (VwGH) 2000/03/0187, 11 October 2000; immunities of a consul in transit according to Article 54 para. 1 of the Vienna Convention on Consular Relations

Short summary: This decision refuses to grant a consul in transit immunity against a fine for exceeding speed limits.

32.

Title: Administrative Court (VwGH) 2003/20/2004, 20 March 2003; lawful interception of mail in case of not-competent consul

Short summary: Correspondence with a consul of another Member State does not profit from the privilege of confidential consular mail.



Belgium - België - Belgique (BE)

1. Introduction

This Report provides an overview of Belgian State practice with regard to consular and diplomatic assistance focusing in particular on the application of Article 23 TFEU.

The present Report was compiled on the basis of available official and public information, interviews conducted with competent civil servants and some relevant internal documents and instructions.

1.1. Terminology -National acronyms and definitions

Court of Cassation: The Court of Cassation (*Hof van Cassatie* - *Cour de cassation* - *Kassationshof*) is the main court of last resort in Belgium.

Council of State: The Council of State (*Raad van State* - *Conseil d'État* - *Staatsrat*) is the Supreme Administrative Court of Belgium. Its functions include assisting the executive with legal advice and acting as the Supreme Court for administrative justice.

Constitutional Court: The Constitutional Court of Belgium (*Grondwettelijk Hof* - *Cour constitutionnelle* - *Verfassungsgerichtshof*) plays a central role within the federal Belgian State. It is competent to supervise the observance of the constitutional division of powers between the federal State, the communities and the regions. The Court is also responsible (since 1988) for supervising the application of a number of specific Articles of the Belgian Constitution [e.g., the principles of equality, non-discrimination and the rights and liberties in respect of education (Articles 10, 11 and 24 of the Belgian constitution) and with a Special law of 2003, this competence was expanded to Section II (Articles 8 to 32), and Articles 170, 172 and 191 of the Belgian Constitution]. The Court is therefore developing into a real constitutional court.

Directorate General for Consular Affairs (DGC): The Director General at the Belgian Ministry for Foreign Affairs competent for consular Affairs.

2. Legal framework

2.1 International Law

Belgium is a party to the following multilateral treaties:

- Vienna Convention on Consular Relations (*Moniteur belge*, 14 novembre 1970).
 - o Vienna Convention on Consular Relation Optional Protocol on the Compulsory Settlement of Disputes (*Moniteur belge*, 14 novembre 1970).
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80).

Luxembourg and Belgium have a long history of consular cooperation in the event that Luxembourg has no Consulate available in the region. Since 1965 a [formal agreement](#) on consular and diplomatic assistance has existed between Belgium and Luxembourg: *Convention entre le Royaume de Belgique et le Grand-Duché de Luxembourg relative à la coopération dans le domaine consulaire, signée à Bruxelles, 30 septembre 1965.*

This treaty between Belgium and Luxembourg was published in the Belgian Official Journal on 8 December 1966 (*Moniteur belge*, 8 décembre 1966). In Luxembourg it was approved by the Law of 16 August 1966 “*portant approbation de la Convention entre le Grand-Duché de Luxembourg et la Royaume de Belgique relative à la coopération dans le domaine consulaire, signée à Bruxelles le 30 septembre 1965*” (Doc. Parl. n° 1197, Sess. Ord. 1965-1966).

Belgium is a party to a whole list of bilateral treaties on consular protection. The most important ones can be found in [Section 9](#).

2.2 Transposition of international law into national law

Contrary to some other Member States of the EU such as Austria, France, Germany, the Netherlands, **the Belgian Constitution does not have a provision explicitly specifying the relation between international and national law and explaining how international law is applied in the Belgian domestic legal order**. The only point that the Constitution specifies is that the exercise of specific powers can be assigned by treaty or by a law to international institutions (Art. 34) and requires treaties to receive the approval of the federal Parliament or the Parliaments of the Regions or Communities (for matters falling within their respective spheres of competence) to have effect in the internal legal order (Art. 167). Moreover, to have effect vis-à-vis individuals the treaty must have been published in the Belgian Official Journal (*Moniteur belge* – *Belgisch Staatsblad*). Many treaties are, however, not published.

Failing a clear constitutional provision on the interaction between international and national law, the highest courts and tribunals had to clarify the issue.¹ The Court of Cassation in its 1971 *Fromagerie Franco-Suisse Le Ski* judgment opted for the rule that in case of incompatibility between a treaty-obligation having direct effect and a conflicting national rule, priority must be given to the international treaty rule. Priority of the latter is deduced from the nature of international conventional law. A fortiori for the Court this means that when conflicts exist between national law and a rule of European Community law the latter has priority.² A treaty obligation has direct effect when the obligation of the State is clearly specified and has the objective to create rights or duties for individuals (Court of Cassation *Thonon* case, 1983).³ The ruling of the Court of Cassation on priority has been confirmed on numerous occasions by this court but also by the Council of State and the Constitutional Court so that today the rule enunciated by the Court of Cassation can be considered as fixed jurisprudence.

The *Le Ski* ruling only referred to the relationship between directly applicable treaties and domestic law. For a long time it remained a controversial issue whether rules on international customary law directly is applied in the national legal order in the same manner as treaty law. In the *Sharon* case (2003)⁴ the Court of Cassation opted for a view close to the *Le Ski* ruling providing that the international customary law on the immunity of heads of State and governments has priority over a provision of national law providing that the immunity attached to the official capacity of a person does not

¹ See for a more detailed account on the interaction between international and national law in Belgium, Jan Wouters & Dries Van Eeckhoutte (eds.), *Doorwerking van internationaal recht in de Belgische rechtsorde*, Intersentia, 2006.

² Court of Cassation, 27 May 1971, *S.A. Fromagerie Franco-Suisse ‘Le Ski’*, Journal des tribunaux 1971, p. 471 et seq.

³ Court of Cassation, 21 April 1983, *Thonon*, Rechtskundig Weekblad 1983-84, p. 2315.

⁴ Court of Cassation, 12 February 2003, *Sharon*, Pasicrisie belge, 2003, 307

bar the application of the law of 16 June 1993 concerning the punishment of grave breaches of international humanitarian law.

The question on the relationship between the Constitution and international law has been tackled by the Council of State and the Constitutional Court which defended opposite views. In the *Orfinger* case (1996) the Council of State defended the view that European Community law and the way it is interpreted by the European Court of Justice has priority over all norms of national law including the Constitution.⁵ In the case concerning the *Gemeente Lanaken* (1991), however, the Constitutional Court which has a limited power to adjudicate on the (constitutional) rules on attribution of competences between the State, the communities and the regions, Title II of the Constitution on the Belgians and their rights as well as Articles 170, 172 and 191 of the Constitution, decided that it had the power to test the compatibility of a treaty provision with the Constitution.⁶ This has been confirmed in the case concerning *Europese scholen* (1994) where the Constitutional Court added that norms of international law are created by states and therefore no norm of international law gives states the competence to conclude treaties violating their own constitutions.⁷

Belgium has ratified the major conventions on consular and diplomatic protection (see above) but has not adopted a specific law on this issue.

2.3 Implementation of European law into national law

The *Loi portant assentiment à la Décision des représentants des Gouvernements des Etats Membres, réunis au sein du Conseil du 19 décembre 1995 concernant la protection des citoyens de l'Union européenne par les représentants diplomatiques et consulaires* has been published in the Belgian Official Journal on 6 August 1999.

The Ministry for Foreign Affairs has issued various **circulars and instructions** to Belgian representations abroad explaining the content of the obligations contained in Article 23 TFEU and Decision 95/553 and how the representations must apply them. These circulars and instructions are internal documents which are not publicly available.

Council Decision 96/409/CSFP was incorporated in Belgium through the Ministerial Decree of 12 December 1996 but has not been published in the official journal.

2.4 National law

The Belgian Ministry for Foreign Affairs has published a *Manuel de chancellerie* that is available in electronic and printed version to the consuls, diplomats and other civil servants who are dealing with Belgians abroad. **The manual is an internal document and is not publicly available.**

As in many other Member States of the European Union **consular protection is considered as a service to the own and EU citizens. There is no legal obligation for the Ministry for Foreign Affairs to perform these services. This means that no appeal is possible if an embassy or consulate does not provide consular protection or assistance.**

In practice, consular assistance is only granted in case of absolute necessity and if relatives or friends have been found unable to help.

⁵ Council of State, 5 November 1996, *Orfinger*.

⁶ Constitutional Court, *Gemeente Lanaken*, Moniteur belge, 23 November 1991.

⁷ Constitutional Court, *Europese Scholen*, Moniteur belge, 11 March 1994.

In general, assistance is given by Belgian diplomatic and consular agents to protect the interests of persons (and organizations, ships or aircrafts) of Belgian nationality. Except for the Article 23 TFEU, special arrangements exist for extending assistance to citizens of Luxembourg when Luxembourg does not have diplomatic or consular service in the relevant region or when the competent diplomatic or consular authority is absent or unable to exercise its functions. Bi-nationals, refugees, and stateless persons have - according to obligations contracted under international law - a specific but limited right of consular assistance.

There is currently no debate at the national level on consular protection and no legislation is being prepared for the moment.

The Directorate General for Consular Affairs (DGC) is coordinating the consular activities of Belgium. The activities are performed abroad by **more than 100 diplomatic posts and consulates-general**⁸ generally based in the capital city of the State. In places where a great numbers of Belgians live, honorary consuls are also rendering limited services to Belgian nationals under the supervision of the DGC and the diplomatic and consular posts. They are usually nationals of other states who are not remunerated for the service rendered.

Following activities are the most common performed by the consular services:

- **Activities normally exercised in Belgium by the municipalities** (e.g., nationality, civil affairs, legalisation, passports, identity cards, elections, etc.) **or notaries**. Belgian career diplomats legally exercise the notarial powers enshrined in Belgian law in those countries where they are accredited. Career consuls and honorary consuls also have notarial powers which are attributed to them in advance by ministerial decree. Belgium's representatives abroad may draw up notarial acts in the same way as a notary in Belgium. In most cases they must have received a draft deed from a Belgian notary to do so. They may refuse to act as a notary if a legal or de facto difficulty prevents them from doing so.
- **Assistance to citizens abroad who are in situations of distress**. For citizens abroad such as tourists, Belgians arrested or detained in foreign prisons, families of abducted children etc., the Belgian diplomatic and consular services (in close cooperation with the Ministry for Foreign Affairs) provide first support and enable citizens to organize appropriate assistance. **Consular assistance will only be granted in case of absolute necessity and if relatives or friends have been found unable to help**. In such cases contacts to professionals (such as doctors, lawyers, travel agencies, companies specialised in repatriations etc.) may be provided. **The cost of such assistance has to be born by the citizen. In case of emergencies (natural catastrophes, pandemics or armed conflicts) special assistance may be provided by the Ministry for Foreign Affairs**. To this end and depending on the seriousness of the emergency a call centre or even a crisis centre can be set up with specialists to coordinate the activities and keep relatives informed.
- **Delivery of visa** to foreigners who are travelling to Belgium.

The **Directorate General for Consular Affairs** is composed of four directorates. The first directorate on assistance to persons in distress (C.1) is the most relevant for the present report. It is subdivided in three branches: assistance to Belgians (C.1.1),

⁸ Addresses of these posts are available on the web site of the Ministry for Foreign Affairs at <http://www.diplomatie.be/en/addresses/abroad/default.asp>

International Juridical Cooperation (C.1.2) and the Fight against Transnational Organized Crime (C.1.3).

2.5. Documentation of consular protection

There is no recent publication on Belgian State practice in international law in general and on consular practice in particular. The *Revue belge de droit international – Belgisch tijdschrift voor international recht* published since 1965 by the Belgian Society for International Law regularly publishes a chronic of Belgian State practice with regard to international law⁹.

Relevant case law of the Constitutional Court, the Council of State and the Court of Cassation can be found via ‘*Belgiumlex*’¹⁰.

2.6. Information to citizens on consular protection

For the general public the Ministry for Foreign Affairs has published a number of brochures such as a brochure with general and useful information for those travelling abroad (*Reiswijds*), the brochure explaining the assistance that can be offered to Belgians detained in foreign prisons (*Bijstand aan Belgen in buitenlandse gevangenissen - L’assistance aux belges détenus à l’étranger - Beistand für belgische Staatsbürger die im Ausland inhaftiert sind*, September 2009). These brochures are available at the Ministry for Foreign Affairs, the Belgian diplomatic and consular posts abroad but also in travel agencies all over the country.

The website of the Ministry for Foreign Affairs¹¹ provides information to the general public on items that are most relevant for those who are travelling or living abroad. The information on the website is available in Dutch, French, German and English.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Bilateral agreements between Belgium and third countries do not include provisions protecting Union citizens working and living in third countries.

Belgium has advised his consular network to inform third countries’ authorities about the practice of extending protection to Union citizens (Art. 8 Vienna Convention on Consular Relations). **Belgium has notified the third countries of the regulations on consular assistance to EU citizens and that accordingly every EU post can be contacted.** In the same notification Belgium asked the authorities of third countries to inform their local authorities of the existence of this type of cooperation between EU Member States.

Bilateral agreements between Belgium and third countries do not include provisions extending consular protection to union citizens’ family members who are not nationals of a Member State.

In general, Belgium does not extend consular protection to union citizens’ family members who are not nationals of a Member State. **Exceptions exist in cases of evacuations.** Until now, Belgium has not informed third countries of this practice.

⁹ The table of contents of the journal can be consulted at

http://www.ulb.ac.be/droit/cdi/Site:Revue_belge_droit_international_RBDI_.html

¹⁰ <http://www.belgielex.be/V2/belgiumlex/website/en/index.html#>

¹¹ <http://www.diplomatie.be>

Belgium has not started negotiations concerning agreements with third countries that include provisions protecting Union citizens working and living in third countries.

Belgium has not started negotiations concerning agreements with third countries that include provisions extending consular protection to union citizens' family members who are not nationals of a Member State.

3.2. Statistical data on consular practice

No detailed, systematic and public statistics are kept of the assistance provided to Belgians or EU citizens. **Internal sources reveal the following data:**

Statistics on consular assistance (see also the statistics below under [Section 7](#) on the exercise of consular functions for expats)

There is neither data available on consular protection for EU citizens nor on consular protection for Belgian citizens received from other Member States' embassies and consulates in third countries.

<u>2009</u>	747 files have been opened	263 Support 61 Missing persons 148 Financial aid 265 Deceased 10 Deceased and financial aid
<u>2008</u>	631 files have been opened	214 Support 61 Missing persons 106 Financial aid 236 Deceased 14 Deceased and financial aid
<u>2007</u>	610 files have been opened	191 Support 60 Missing persons 129 Secours financier 218 Deceased 12 Deceased and financial aid
<u>2006</u>	661 files have been opened	199 Support 89 Missing persons 140 Financial aid 228 Deceased 5 Deceased and financial aid
<u>2005</u>	581 files have been opened	155 Support 65 Missing persons 152 Financial aid 198 Deceased 11 Deceased and financial aid

Statistics on the number of Belgians detained abroad (as of 5.03.2010)

France	92	Australia	3
Spain	84	United Arab Emirates	3
Morocco	45	China	3
Germany	30	Colombia	2
United Kingdom	28	Cameroon	2
Italy	25	Japan	2
Brazil	11	Jordan	2
The Netherland	10	Democratic Republic of the Congo	2
Luxembourg	9	Rwanda	2
United States of America	9	Romania	2
Norway	9	Senegal	1
Venezuela	6	Slovakia	1
Thailand	6	Czech Republic	1
Sweden	5	Tanzania	1
Switzerland	4	Mexico	1
Portugal	4	Philippines	1
Turkey	4	Poland	1
Egypt	4	India	1
Austria	4	Canada	1
Peru	4	Burundi	1
Cuba	3	Argentina	1
Ireland	3	Costa-Rica	1
Greece	3	Ivory Coast	1
Hungary	3	Croatia	1

4. Consular protection in detail

As with other EU Member States, **the Vienna Convention on Consular Relations constitutes for Belgium the legal basis for consular services. No implementing national law exists so far and no legislation proposal is currently being prepared at the national level.**

European rules are directly applicable.

Belgian practice can be found in internal circular, instructions, regulations and other documents most of them not available to the public. There is a *Manuel de Chancellerie* (Handbook on consular practice) compiling the instructions of the Directorate General on Consular Affairs (DGC) and meant for diplomatic and consular agents (the manual is not available to the public). The Handbook needs updating.

4.1 Right to consular (and diplomatic) protection

As mentioned earlier, **no right to consular (and diplomatic) protection exists.** Consular (and diplomatic) protection is provided only for Belgians and EU-nationals, as a service rendered to the citizens. **In general, consular protection is neither extended to family members who are not nationals of a Member State nor rendered to bi-national in the State of their other nationality. It is also extended to recognized refugees but not to persons with resident permits.**

Consular assistance often focuses on issuing information to the person involved and/or to the family. However, should the need arise, further action may be required.

4.2. Assistance in cases of death

If a Belgian embassy or consulate is informed of the death of a Belgian national abroad and the relatives have not been notified directly, the embassy or consulate immediately gathers as much **information** as possible about the deceased person and the circumstances of his or her death.

If the deceased was travelling alone and relatives have not been notified directly of his/her death, this information is forwarded to the authorities in Belgium to ensure that the relatives are notified as soon as possible and to allow them to take the necessary decisions quickly. Information about the death is reported directly to relatives in Belgium by specialised services in Belgium and not by the embassy or consulate abroad.

If the deceased was not travelling alone, accompanying relatives can contact the Belgian embassy or consulate, which will be able to provide assistance with the steps that need to be taken. They will also be supported by any assistance organisation or insurance company involved. Relatives in Belgium may contact the Assistance department at the Ministry for Foreign Affairs. The Belgian embassy or consulate can help relatives who were travelling with the deceased person to contact relatives in Belgium, assistance organisations, insurance companies and local authorities (such as the police, hospital or funeral directors).

The embassy or consulate can provide relatives in Belgium with updated information via the Assistance department at the Ministry for Foreign Affairs.

4.2.1. Identifying and repatriating remains

If necessary, the embassy or consulate **can provide assistance in obtaining a death certificate, or if needed, a copy of any statement or autopsy report that may be required.** If necessary, it can also issue a '**laissez-passer for a corpse**' to allow the body to be repatriated to Belgium or issue a consular certificate to accompany an urn containing the ashes of the deceased.

If the deceased leaves personal effects and/or luggage that cannot be taken care of abroad by relatives, the embassy or consulate will take the appropriate provisional measures, draw up an inventory of items and estimate the cost of repatriating the items to Belgium.

The costs of any legal formalities (such as the death certificate) and the repatriation or burial of the body or ashes have to be borne by the deceased's family or insurance company.

4.3. Assistance in cases of serious accident or serious illness

When serious accidents are reported to Belgian diplomatic or consular missions they will **inform the family** in Belgium, **arrange visits or give advice on hospitals with a good standard and doctors** (Belgian representations keep a list of lawyers, doctors, hospitals, and banks in order to enable the citizen to help himself with assistance of competent professionals). Financial advances are granted only in very exceptional circumstances and are subject to the signature of a written commitment of reimbursement.

4.4. Assistance in cases of arrest or detention

Assistance provided to Belgian citizens in cases of arrest and detention depends on the case and country the Belgian is detained. **In general, assistance provided in Europe is more limited than when the person is arrested or detained in a country situated in another continent.** Depending on the situation and the necessities the arrested or detained person (or the person who represents him) will decide on the most appropriate assistance together with diplomatic and consular services.

The most common forms of assistance are:

- to inform his/her family or friends that he/she has been arrested;
- to establish and maintain contact with family members (in general when arrested/detained outside Europe);
- to maintain contact when needed (in general when arrested/detained outside Europe);
- to assure that the arrested/detained person is kept in humane condition of detention and that his/her treatment is at least equal to the inhabitants of the State where he/she is arrested/detained;
- to inform the family about the prison system of the country where a family member is arrested/detained;
- secure acceptable living conditions in terms of food and medical treatment;
- in countries with a hard detention regime, the Belgian diplomatic and consular services can, when allowed by the local authorities, purchase food, cloths and other items of basic necessity. The cost is paid by the detainee or his/her family or friends;
- to deliver mail if accepted by the local authorities and when the mail service is not functioning adequately. Messages can also be transmitted if the telephone services are not functioning (in general when arrested/detained outside Europe);
- facilitate the transfer of money if need be.

The Belgian diplomatic and consular services do not have instructions to

- assist Belgians with a double nationality in the country of their other nationality;
- intervene as legal advisors or as interpreters of local legislation;
- choose, recommend or impose a lawyer;
- intervene in the preparation of the defence;
- pay the legal costs/fees, fines, translation costs, lawyers' fees etc.;
- deliver items/goods when forbidden by the local authorities;
- arrange travel and accommodation for persons who are visiting the arrested or detained person.

4.5. Assistance to victims of violent crime

In general practical assistance is given. In first place, the victim of violent crime is informed about what he/she can and should do locally to recover loss or damages. He/She is also informed which is the competent local authority. If need be the person will be accompanied to the local authority. A detailed report of the facts is made and sent to the DGC in Brussels and if it is a non-Belgian EU citizen to the competent authority in the capital of the Member State (via the local Belgian Embassy) and the nearest competent consular or diplomatic post in the region.

4.6. Relief and repatriation of distressed citizens

The diplomatic and consular services have been instructed to implement the Guidelines for the protection of unrepresented EU nationals by EU Member States' missions in third countries and the Guidelines on Consular protection of EU citizens in third countries and have accordingly developed a practice of cooperation among the various EU Member States' diplomatic and consular posts and have provided assistance to EU nationals

- in cases of death;
- in cases of serious accident or illness;
- in cases of arrest or detention; to victims of violent crime; and
- relief and repatriation of distressed EC nationals;
- in situations in which the safety of EU citizens is endangered in a third country.

The national instructions have always added that the enumeration is not exhaustive encouraging the Belgian diplomatic and consular posts to provide assistance in other cases while keeping into account the legal framework which regulates their activities and when time constrains allow it inform and seek advice from the DGC in Brussels. The national instructions ask not to make financial expenses without authorization of the DGC in Brussels and to consult the competent post of the Member States which nationality the person in distress possesses.

In general the 'Guidelines for the protection of unrepresented EC nationals by EC missions in third countries' serves as basis for assistance to EU citizens even though a pragmatic and often case-by-case approach is followed. **There is no legal basis for the assistance provided in cases of natural disasters, terrorist acts, pandemics or military conflicts. The assistance is therefore provided on the basis of internal national instructions and on a case-by-case decision taken in consultation with the DGC in Brussels and if need be with the competent post or national authority of other EU Member States.**

Belgium is a **Lead State** for the Democratic Republic of the Congo. Due to the problematic diplomatic relations Rwanda has with several Member States of the EU the Belgian embassy provided consular assistance to citizens of those EU Member States (e.g., France, the Netherlands, Spain).

4.6.1. Natural disasters

When natural disasters of certain magnitude take place (internal national regulations require more than 7 Belgian nationals confronted by the consequences of the disaster) a **crisis centre** can be set up to coordinate relieve and support activities. This crisis centre functions on 24/24 basis and is in contact with the relevant national and EU authorities (via Coolwebsite = consular online website). A **'flying consular assistance' team** can be sent to the region of the disaster within the first 24 hours to assist Belgian and EU citizens during search, rescue and evacuation activities.

In the context of the **Tsunami** a diplomat was sent to the region and the Belgian Embassy in Bangkok was temporarily strengthened.

For the **Haiti** crisis a flying consul has been sent to the region (3 in total). He had to identify the Belgians living in the region, deliver travel documents, search for missing Belgians and help with the evacuation flights.

In less extreme situations the DGC coordinates the activities. These activities include listing and contacting Belgian (and EU citizens), inform and keep contacts with family

members in Belgium, support the Belgian consular and diplomatic posts in the region of the disaster, support the victims (including organizing evacuations).

4.6.2. Terrorist acts

In cases of terrorist attacks the Belgian representation will try to locate all Belgians residing in the area as well as those who are travelling in the region. Contacts are maintained with the competent local authorities and the EU missions. The Belgian representatives help in the search and identification of missing persons and keep the family in Belgium informed. As with natural disasters a **crisis centre** can be set up.

All available information is shared with the other EU Member States (e.g., **terrorist attack in Mumbai** where joint search initiatives were taken by Dutch and Belgian consuls).

Belgium has a policy not to pay for freeing hostages.

4.6.3. Pandemics

Similar responses as with the natural disasters but activities are coordinated by the Ministry of Health. Travel advices are maintained on the website of the Ministry for Foreign Affairs. The Belgian embassies and consulates inform the Belgian expatriates in their jurisdiction on the necessary measures to be taken (e.g., Mexican flu).

4.6.4. Military conflicts

Similar to terrorist attacks. A decision the evacuation all Belgian citizens (and if need be other EU citizens) is taken more rapidly. During the **Lebanon crisis** the Belgian Embassies in Beirut and Cyprus were temporarily strengthened, Belgians were evacuated to the Syrian border and to Cyprus.

4.6.5. Financial advances

Financial assistance will be given only exceptionally.

If an intervention of the Belgian diplomatic or consular agent engenders cost for the person in distress the instructions require that a pecuniary provision is asked to cover the intervention. If the sum of the financial assistance is not reimbursed, the civil servant can be held personally responsible. **The person who receives financial assistance will have to sign a written commitment of reimbursement.** If a consular tax has to be paid this is done in accordance with the [Law of 30 June 1999](#) (*Wet houdende het tarief der consulaire rechten en der kanselarijrechten – Loi portant le tarif des taxes consulaires et des droits de chancellerie*) and the applicable tariffs.

4.7. Reimbursement of the assisting State

No practice is reported and no procedures exist.

5. Emergency travel documents (ETD)

Belgian consular posts are issuing ETDs to Belgian (regularly) **and other EU-nationals (on average 5 per year).**

Practice has shown that it is often difficult for Belgian nationals to obtain an ETD from other EU-missions. It seems unclear whether all EU-countries issue these documents. In one case a Belgian had been the object of a robbery in Namibia and an

Embassy of an EU Member State refused to give him travel documents so that he was stuck in Namibia for a while.

Belgian consular officers will only issue ETDs to other EU-citizens after consulting the embassy/consulate of the citizen involved. Assistance rendered by a person's own authorities is preferable. In utmost necessity, however, and after consultation between consular officers, assistance to persons in need may be considered. Distance is one element, possibility of communication and possibility of travel (taking into account the cost) are other elements underlying the decision whether or not to direct the person to their own authorities for granting ETDs.

Honorary Consuls may issue Belgian passports, but only after consulting the Belgian embassy/consulate under which they resort. They are not competent for issuing ETDs.

6. Relevant diplomatic protection

No right to consular (and diplomatic) protection exists. That there is no right of diplomatic protection is for example confirmed by the [judgment of the tribunal of first instance of Brussels 15 November 2005](#). A Belgian citizen can therefore not oblige the Belgian State to intervene against another State to protect his interests. Consular (and diplomatic) protection is provided only for Belgians and EU-nationals, as a service rendered to the citizens. In general, consular protection is neither extended to family members who are not nationals of a Member State nor rendered to bi-national in the State of their other nationality.

Consular assistance often focuses on issuing information to the person involved and/or to the family. However, should the need arise, further action may be required.

7. Exercise of consular functions for expats

There are between 500.000 and 1.000.000 Belgian citizens living abroad. From this number around 290.000 have registered in Belgian embassies/consulate of the country where they are residing. Registration is, however, not obligatory. **Registration in the population register of the Belgian consulate or embassy** is important to benefit from the same services as those provided by municipal authorities in Belgium. Registration allows the embassy or consulate to assist more efficiently when issuing an identity card, issuing consular certificates (e.g., residence certificates, registration certificates, certificates of nationality, 'household composition' certificates, cohabitation etc.). Also for purposes of elections it is important to register. Registered Belgians may participate in some elections in Belgium (federal general elections, and European elections if you reside in an EU Member State).

Foreign nationals who are part of a family of a registered Belgian citizen may also be registered. However, this does not entitle them to obtain a consular identity card or a passport, nor does it give them the right to be registered as a Belgian voter. If they require consular assistance, they should first contact the office representing their country of origin.

The countries with most registered Belgians are:

1. France: +/- 81.500
2. The Netherlands: +/- 23.500
3. Germany: +/- 21.500
4. Spain: +/- 20.000
5. United States of America: +/- 18.000

6. Luxembourg: +/- 16.500
 7. Switzerland: +/- 13.500
 8. United Kingdom: +/- 12.000
 9. Canada: +/- 11.000

Belgian expats keep contact with one-other and the mother country (region) through specific organizations and networks. The main websites are focusing on either Flemish or French speaking citizens. For the Flemish speaking Belgian expats there is '*Vlamingen in de wereld*' (<http://www.viw.be>) and '*Club Diaspora – Flanders – Belgium*'¹² and the French speaking have a '*Union des Belges francophones à l'étranger*'¹³.

Besides the services rendered to Belgian who are abroad on a short-term basis, consular assistance is provided to expats. **These services mainly relate to**

- exercising municipal authority (see above)
- issuing identity cards for Belgians living abroad
- delivering Belgian passports
- registry (birth, acknowledgement of parentage, adoption abroad, marriage, divorce, death, name and registration certificates)
- legalisation
- Belgian nationality
- notarial competences
- assistance in the event of death overseas
- copy of criminal record

Statistics on consular functions for expats

Post	Demanded visa	Registered Belgians	Consular acts	Delivered ID cards	Delivered passports	Legalisation	ETD + Temp Pass	Life certificates
Londres	10.835	15.762	17.603	1.316	2.772	291	529	951
Paris	175	48.567	11.309	3.149	5.035	1.125	133	529
Casablanca	19.437	1.341	33.610	51	311	12.977	163	155
Kinshasa	11.915	1.565	18.762	112	563	4.984	68	386
Bangkok	3.995	1.880	13.527	63	620	6.826	98	328
La Haye	99	30.068	5.214	1.308	2.898	298	125	88
Nice	4	6.187	5.300	2.008	2.099	205	196	250
New York	2.438	8.983	4.734	130	1.336	287	116	29
Tunis	2.800	412	9.221	104	240	5.491	151	136
Luxembourg	0	17.654	4.046	1.125	2.251	78	105	268
Montréal	1.121	7.315	4.350	73	875	1.013	35	841
Lille	0	20.315	3.745	821	1.344	161	80	142
Tanger	0	610	29.649	76	147	28.953	252	103
Alicante	0	9.532	2.807	687	925	112	285	436
Istanbul	5.255	726	6.227	48	105	282	104	275
Rabat	620	444	28.513	54	174	27.193	142	36
Genève	0	9.026	2.564	496	1.287	64	117	399
Rome	67	3.165	1.981	415	709	126	102	219
Madrid	45	3.833	1.937	260	488	144	197	576
Alger	5.062	334	14.179	44	106	8.766	50	28

¹² <http://www.clubdiaspora.be>

¹³ <http://www.ufbe.be>

Belgium

Post	Demanded visa	Registered Belgians	Consular acts	Delivered ID cards	Delivered passports	Legalisation	ETD + Temp Pass	Life certificates
Johannesburg	4.679	4.600	6.263	40	947	263	40	0
Los Angeles	704	6.044	2.431	53	836	157	94	143
Ankara	7.518	898	8.197	93	98	183	196	0
Le Caire	3.317	597	6.402	63	142	2.436	52	5
Abou Dhabi	1.950	1.832	3.634	80	459	788	8	11
Barcelone	0	5.809	2.098	407	675	82	447	142
Lisbonne	29	2.270	1.395	136	253	316	214	369
Mumbai	24.415	343	26.197	30	67	1.598	16	27
Pékin	7.600	364	12.620	28	124	4.685	27	0
Beyrouth	1.987	1.358	6.993	37	225	4.389	18	34
Le Cap	1.246	2.623	2.259	50	512	67	40	133
Athènes	23	2.283	1.297	128	181	266	158	470
Moscou	20.260	371	20.983	27	119	484	12	0
Yaoundé	4.702	271	10.231	13	55	5.432	16	0
Shanghai	4.222	856	7.325	25	276	2.528	23	0
Dakar	3.886	338	5.793	41	116	1.545	18	5
Manille	2.572	577	5.563	9	135	2.558	25	2
Kigali	2.346	407	4.569	18	114	1.802	24	80
São Paulo	367	2.074	2.520	58	229	1.348	11	174
Tel Aviv	163	5.250	2.246	45	756	22	19	616
Buenos Aires	74	5.499	1.052	95	503	26	37	204
Téhéran	3.731	164	5.655	11	31	1.839	7	3
Abuja	3.314	346	5.352	30	84	1.909	6	1
Bujumbura	2.698	287	3.742	30	78	836	12	31
Cologne	1	0	2.399	735	806	96	45	548
Canberra	315	4.320	1.877	80	621	70	15	142
Strasbourg	0	8.289	1.746	718	726	34	17	42
Berne	12	6.508	1.358	406	633	47	15	73
Jérusalem	461	1.609	1.124	27	266	183	23	113
Rio de Janeiro	64	1.438	2.913	48	201	1.990	24	146
New Delhi	6.961	298	7.376	23	95	228	24	3
Abidjan	3.250	439	7.693	35	92	4.188	13	0
Kiev	7.921	85	8.208	2	23	233	12	0
Jakarta	1.592	391	2.897	26	116	1.043	15	23
Washington D.C.	629	1.935	1.295	27	276	195	19	93
Hong-Kong	253	857	1.004	14	289	168	48	36
Toronto	0	5.447	1.404	82	444	315	17	194
Santiago du Chili	74	1.305	1.767	70	185	1.229	25	84
Islamabad	2.215	165	6.776	2	42	4.493	9	0
Damas	1.694	416	4.582	7	79	2.735	3	0
Taipei	1.651	238	2.446	9	68	655	4	17
Bogotá	1.643	1.015	2.224	41	203	77	9	30
Atlanta	545	3.903	1.292	34	501	123	14	0
Dublin	910	1.130	1.255	40	181	19	65	8
Mexico	340	1.458	1.246	36	243	483	11	80
Caracas	500	1.029	1.069	65	279	134	10	56
Tokyo	548	731	1.236	25	147	127	5	302
Sainte Croix de Tenerife	0	2.697	1.069	171	216	47	55	251
Riyad	2.675	393	3.262	33	79	199	1	1

Belgium

Post	Demanded visa	Registered Belgians	Consular acts	Delivered ID cards	Delivered passports	Legalisation	ETD + Temp Pass	Life certificates
Guangzhou	1.434	77	2.944	11	60	1.382	28	1
Amman	1.704	137	2.475	9	33	677	3	1
Belgrade	4.150	180	4.296	11	35	26	18	39
Pristina	2.390	47	4.604	9	10	2.156	14	0
Addis-Abeba	1.268	85	3.712	10	19	1.759	5	5
Dar es Salaam	900	559	1.327	35	113	239	11	
Vienne	12	1.680	582	66	254	10	52	128
Varsovie	106	673	728	31	114	218	20	136
Tripoli	2.509	71	2.763	9	18	214	2	0
Nairobi	1.330	572	2.022	38	183	411	13	0
Hanoï	1.530	234	2.801	22	82	1.101	7	0
La Havane	646	57	1.524	1	14	809	18	9
Bucarest	1.007	321	1.209	15	51	28	34	38
San José	59	859	643	42	204	277	13	31
Budapest	8	547	377	30	79	10	107	113
Brazzaville	827	312	1.553	16	59	612	18	0
Singapour	394	0	1.336	15	281	383	29	10
Sofia	373	213	732	23	43	137	43	54
Stockholm	2	1.065	352	46	134	26	13	121
Ouagadougou	970	110	1.717	20	85	580	13	0
Luanda	892	182	1.580	6	49	548	11	0
Kampala	731	130	1.090	10	33	291	9	0
Zagreb	488	294	633	9	44	18	66	2
Lubumbashi	280	563	482	13	39	45	31	18
Séoul	224	133	434	3	37	24	5	12
Kuala Lumpur	77	243	522	6	92	236	8	27
Oslo	6	893	259	37	153	16	10	23
Prague	28	448	357	33	75	81	95	30
Koweït	1.431	175	1.654	9	43	52	0	0
Doha	592	318	869	8	54	138	0	0
Ljubljana	0	79	137	6	6	31	66	25
Milan	0	3.900	65	6	12	7	18	5
Helsinki	68	308	190	9	57	20	21	0
Copenhagen	0	335	258	33	118	36	21	22
Berlin	2	367	90	13	49	6	1	6
Bratislava	2	182	95	5	32	6	9	9
Tirana	2.872	0	2.876	0	0	4	0	0
La Valletta	0	136	52	3	18	13	10	8
Vilnius	0	31	60	2	10	38	4	1
Riga	0	29	50	1	6	19	22	1
Tallinn	1	17	48	2	7	32	6	0
Saint-Petersbourg	0	34	70	8	17	14	12	0
Nicosie	0	211	71	20	31	0	15	2
Astana	0	42	53	7	20	23	1	0
Cotonou	1.356	0	1.356	0	0	0	0	0
Kingston	0	39	90	1	10	79	0	0
Bamako	548	0	549	0	0	0	0	0
Marseille	0	0	0	0	0	0	0	0
Total	231.142	296.164	495.300	17.352	40.994	166.878	5.968	11.745

Belgium is closing a number of consulates due to budget cuts (e.g., Alicante, Malaga, Nice). The Ministry for Foreign Affairs has the opinion that it has a sufficient dense network of consulates to provide adequate consulate assistance but Belgian citizens abroad have complained about these closures.

A support framework of EU Member State is not really seen as a sufficient solution by the DGC. A better alternative would be to co-operate more with friendly states.

8. Summary

Belgium has ratified the most important (but not all) international treaties and conventions on consular relations. It has concluded numerous bilateral treaties and maintained informal arrangements with these and other countries.

Assistance to EU citizens is provided according to Article 23 TFEU. The Belgian internal instructions encourage Belgian consular and diplomatic posts to go beyond what is strictly required by the European guidelines. In such cases extended support is given the EU citizens subject to consultation with the DGC in Brussels and if need be the national authorities of the EU citizen requesting assistance.

Belgian has no specific national legislation on consular protection but numerous internal instructions.

9. List of important documents

International treaties and related national instruments

1.

Title: Convention de Vienne sur les relations consulaires

Publication reference: Moniteur belge 14.11.1970

Entry into force: 09.10.1970

English title: Vienna Convention on Consular Relations, Vienna, 24 April 1963

2.

Title: Convention de Vienne sur les relations consulaires – Protocol de signature facultative concernant le règlement obligatoire des différends

Publication reference: Moniteur belge 14.11.1970

Entry into force: 09.10.1970

English title: Vienna Convention on Consular Relations – Optional Protocol on the Compulsory Settlement of Disputes, Vienna, 24 April 1963

3.

Title: Convention entre le Royaume de Belgique et le Grand-Duché de Luxembourg relative à la coopération dans le domaine consulaire

Publication reference: Moniteur belge 08.12.1966

Entry into force: 01.02.1967

English title: Treaty between Belgium and Luxembourg on consular cooperation

Short summary: Co-operation between Belgium and Luxembourg on consular issues

4.

Title: Arrangement entre la Belgique et le Grand-Duché de Luxembourg relatif aux interventions des agents diplomatiques et des fonctionnaires consulaires belges dans la défense des intérêts luxembourgeoises, conclu par échange de lettres datées à Bruxelles le 21 avril 1967

Publication reference: Not published

Entry into force: 21.04.1967

English title: Arrangement between Belgium and Luxembourg on consular cooperation

Short summary: Co-operation between Belgium and Luxembourg on consular issues

5.

Title: Accord entre le Royaume de Belgique et la République du Kosovo relatif à l'établissement de relations diplomatiques et consulaires, conclu par échange de note diplomatiques et lettre (Bruxelles, 26 février 2008 et Pristina, 23 avril 2008)

Publication reference: Moniteur belge 02.07.2008

English title: Consular Treaty between the Belgium and Kosovo

Short summary: Regulatory framework referring to Vienna Consular Convention

6.

Title: Accord du 25 juillet 2006 entre le Royaume de Belgique et la République du Monténégro relatif à l'établissement de relations diplomatiques et consulaires, conclu par échange de notes diplomatiques (Belgrade le 19 juillet 2006 et Podgorica le 25 juillet 2006)

Publication reference: Moniteur belge 22.09.2006

English title: Agreement between Belgium and the Republic of Montenegro on Consular Relations

Short summary: Regulatory framework referring to Vienna Consular Convention

7.

Title: Accord du 6 avril 2005 entre le Royaume de Belgique et les Iles Cook relatif à l'établissement de relations diplomatiques et consulaires par échange de notes diplomatiques (Canberra le 29 novembre 2004, Rarotonga le 6 avril 2005)

Publication reference: Moniteur belge 09.05.2005

English title: Consular Treaty between Belgium and the Cook Islands

Short summary: Regulatory framework referring to Vienna Consular Convention

8.

Title: Convention consulaire entre le Royaume de Belgique et la Fédération de Russie, faite à Moscou, le 22 décembre 2004 (modifiant la Convention consulaire entre le Royaume de Belgique et l'Union des Républiques Socialistes Soviétiques, Protocole annexé et échange de lettre signés à Bruxelles le 12 juillet 1972)

English title: Consular Treaty between Belgium and the Russian Federation

Short summary: Regulatory framework referring to Vienna Consular Convention

9.

Title: Accord entre le Royaume de Belgique et la République démocratique de Timor oriental relatif à l'établissement de relations diplomatiques et consulaires par échange de notes diplomatiques (Dili le 3 octobre 2002, Bruxelles le 3 février 2003)

Publication reference: Moniteur belge 06.11.2003

English title: Consular Treaty between Belgium and the Democratic Republic of East Timor

Short summary: Regulatory framework referring to Vienna Consular Convention

10.

Title: Accord du 23 janvier 2001 entre le Royaume de Belgique et la République populaire démocratique de Corée relatif à l'établissement de relations diplomatiques et consulaires

Publication reference: Moniteur belge 13.04.2001

English title: Consular Treaty between Belgium and the Democratic Popular Republic of Korea

Short summary: Regulatory framework referring to Vienna Consular Convention

11.

Title: Avenant à l'accord du 23 janvier 2001, relatif à l'établissement de relations diplomatiques et consulaires entre le Royaume de Belgique et la République populaire démocratique de Corée

Publication reference: Moniteur belge 27.02.2002

English title: Act modifying the Consular Treaty between Belgium and the Democratic Popular Republic of Korea

Short summary: Regulatory framework referring to Vienna Consular Convention

12.

Title: Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République de Géorgie relatif à l'établissement de relations diplomatiques et consulaires signé à Oslo le 5 juin 1992

Publication reference: Moniteur belge 02.09.1992

Entry into force: 05.06.1992

English title: Consular Treaty between Belgium and the Republic of Georgia

Short summary: Regulatory framework referring to Vienna Consular Convention

13.

Title: Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République de Tadjikistan relatif à l'établissement de relations diplomatiques et consulaires signé à Moscou le 29 avril 1992 (et succession par la République de Tadjikistan aux accords bilatéraux liant d'une part, le Royaume de Belgique (en ce compris ceux conclus avec l'Union Economique Belgo-Luxembourgeoise (UEBL) et, d'autre part, l'ancienne Union des Républiques Socialistes Soviétiques)

Publication reference: Moniteur belge 03.07.1992

Entry into force: 29.04.1992

English title: Consular Treaty between Belgium and Tadzhikistan

Short summary: Regulatory framework referring to Vienna Consular Convention

14.

Title: Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République du Kirghistan relatif à l'établissement de relations diplomatiques et consulaires signé à Bruxelles le 25 mars 1992 (et succession par la République du Kirghistan aux accords bilatéraux liant d'une part, le Royaume de Belgique (en ce compris ceux conclus avec l'Union Economique Belgo-Luxembourgeoise (UEBL) et, d'autre part, l'ancienne Union des Républiques Socialistes Soviétiques)

Publication reference: Moniteur belge 05.05.1992

Entry into force: 25.03.1992

English title: Consular Treaty between Belgium and the Republic of Kirghizstan

Short summary: Regulatory framework referring to Vienna Consular Convention

15.

Title: Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République de Moldavie relatif à l'établissement de relations diplomatiques et consulaires signé à Bruxelles le 11 mars 1992 (et succession par la République de Moldavie aux accords bilatéraux liant d'une part, le Royaume de Belgique (en ce compris ceux conclus avec l'Union Economique Belgo-Luxembourgeoise (UEBL) et, d'autre part, l'ancienne Union des Républiques Socialistes Soviétiques)

Publication reference: Moniteur belge 21.05.1992

Entry into force: 11.03.1992

English title: Consular Treaty between Belgium and the Republic of Moldova

Short summary: Regulatory framework referring to Vienna Consular Convention

16.

Title: Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République de Slovénie relatif à l'établissement de relations diplomatiques et consulaires signé à Bruxelles le 5 mars 1992 (et succession par la République de Slovénie aux accords bilatéraux liant d'une part, le Royaume de Belgique (en ce compris ceux conclus avec l'Union Economique Belgo-Luxembourgeoise (UEBL) et, d'autre part, l'ancienne Union des Républiques Socialistes Soviétiques)

Publication reference: Moniteur belge 05.05.1992

Entry into force: 05.03.1992

English title: Consular Treay between Belgium and Slovenia

Short summary: Regulatory framework referring to Vienna Consular Convention

17.

Title: Accord entre le Gouvernement du Royaume de Belgique et le Gouvernement de la République d'Azerbaïdjan relatif à l'établissement de relations diplomatiques et consulaires signé à Bruxelles le 20 février 1992 (et succession par la République d'Azerbaïdjan aux accords bilatéraux liant d'une part, le Royaume de Belgique (en ce compris ceux conclus avec l'Union Economique Belgo-Luxembourgeoise (UEBL) et, d'autre part, l'ancienne Union des Républiques Socialistes Soviétiques)

Publication reference: Moniteur belge 05.05.1992

Entry into force: 20.02.1992

English title: Consular Treaty between Belgium and Azerbaijan

Short summary: Regulatory framework referring to Vienna Consular Convention

18.

Title: Accord conclu par échange de lettres datées à Bruxelles le 18 février 1982, portant abrogation de l'article 38 de la Convention consulaire entre le Royaume de Belgique et le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, signée à Bruxelles le 8 mars 1961

Publication reference: Moniteur belge 02.12.1982

Entry into force: 18.02.1982

Title: Convention consulaire entre le Royaume de Belgique et la République Algérienne démocratique et populaire, protocole et lettres annexés, signé à Alger le 17 mai 1979

Publication reference: Moniteur belge 19.02.1982

Entry into force: 10.03.1982

English title: Consular Treaty between Belgium and Algeria

Short summary: Regulatory framework referring to Vienna Consular Convention

19.

Title: Convention consulaire entre le Royaume de Belgique et la République populaire de Bulgarie, et échange de lettres, faites à Bruxelles le 28 novembre 1978

Publication reference: Moniteur belge 06.03.1981

Entry into force: 01.03.1981

English title: Consular Treaty between Belgium and Bulgaria

Short summary: Regulatory framework referring to Vienna Consular Convention

20.

Title: Protocole sur l'établissement de postes consulaires entre le gouvernement du Royaume de Belgique et le gouvernement de l'Union des Républiques Socialistes Soviétiques, signé à Bruxelles le 4 octobre 1976

Publication reference: Not published

Entry into force: 04.10.1976

21.

Title: Convention consulaire entre le Royaume de Belgique et la République Populaire Hongroise, et échange de lettres, signé à Budapest le 9 juillet 1976

Publication reference: Moniteur belge 05.10.1978. Erratum Moniteur belge 28.11.1978

Entry into force: 18.10.1978

English title: Consular Treaty between Belgium and Hungary

Short summary: Regulatory framework referring to Vienna Consular Convention

22.

Title: Convention consulaire entre le Royaume de Belgique et la République socialiste tchécoslovaque, signé à Bruxelles le 15 juin 1976¹⁴

Publication reference: Moniteur belge 26.09.1978

Entry into force: 12.08.1978

English title: Consular Treaty between Belgium and Czechoslovakia

Short summary: Regulatory framework referring to Vienna Consular Convention

23.

Title: Convention consulaire entre le Royaume de Belgique et l'Union des Républiques Socialistes Sociétés, Protocol annexé et échange de lettres, signé à Bruxelles le 12 juillet 1972¹⁵

Publication reference: Moniteur belge 09.08.1975

Entry into force: 25.07.1975

English title: Consular Treaty between Belgium and the USSR

Short summary: Regulatory framework referring to Vienna Consular Convention

24.

¹⁴ Modified by *Traités et Accords bilatéraux du 17 décembre 1996 conclus entre la République fédérative tchèque et slovaque et le Royaume de Belgique – Echanges de notes*, Moniteur belge 17.09.1997

¹⁵ Modified by *Convention consulaire entre le Royaume de Belgique et la Fédération de Russie, faite à Moscou, le 22 décembre 2004*.

Title: Convention consulaire entre le Royaume de Belgique et la République de Turquie, et échanges de lettres, signées à Ankara le 28 avril 1972

Publication reference: Moniteur belge 14.04.1976

Entry into force: 03.04.1976

English title: Consular Treaty between Belgium and Turkey

Short summary: Regulatory framework referring to Vienna Consular Convention

25.

Title: Convention consulaire entre le Royaume de Belgique et la République populaire de Pologne, Protocole et échanges de lettres, faits à Varsovie le 11 février 1972¹⁶

Publication reference: Moniteur belge 05.02.1974

Entry into force: 22.12.1973

English title: Consular Treaty between Belgium and Poland

Short summary: Regulatory framework referring to Vienna Consular Convention

26.

Title: Convention consulaire entre le Royaume de Belgique et la République socialiste de Roumanie, et lettres annexés, signées à Bucarest le 1er juillet 1970

Publication reference: Moniteur belge 19. 12.1973

Entry into force: 05.01.1974

English title: Consular Treaty between Belgium and Roumania

Short summary: Regulatory framework referring to Vienna Consular Convention

27.

Title: Convention consulaire entre le Royaume de Belgique et la République socialiste fédérative de Yougoslavie, et lettres annexés, signées à Belgrade le 30 décembre 1969¹⁷

Publication reference: Moniteur belge 20.12.1973

Entry into force: 05.01.1974

English title: Consular Treaty between Belgium and Yugoslavia

Short summary: Regulatory framework referring to Vienna Consular Convention

28.

Title: Convention consulaire entre le Royaume de Belgique et les Etats-Unis d'Amerique, et lettres annexés, signés à Washington le 2 septembre 1969¹⁸

Publication reference: Moniteur belge 20.12.1973

Entry into force: 05.01.1974

English title: Consular Treaty between Belgium and the USA

Short summary: Regulatory framework referring to Vienna Consular Convention

29.

Title: Accord entre la Belgique et Israel relatif aux fonctions consulaires, et annexes, conclu par échange de lettres datées à Tel Aviv le 19 août 1968 et à Jerusalem le 25 septembre 1968

¹⁶ Modifying the *Convention consulaire entre la Belgique et la Pologne, signée à Bruxelles le 12 juin 1928, Moniteur belge 24.08.1931* and which entered into force on 06.09.1931

¹⁷ Modifying the *Convention consulaire entre la Belgique et la Serbie, signée à Belgrade le 5 janvier et 17 janvier 1885, Moniteur belge, 26.01.1886* (and which entered into force on 17.07.1885 and 29.07.1885) and the *Traité de commerce et de navigation entre l'UEB-L et le raume des Serbes, Croates et Slovènes, et protocoles de signature, sgnés à Bruxelles le 16 décembre 1926*. Modified by the *Traités et Accords bilatéraux du 11 mars 1997, conclus entre la République socialiste fédérative de Yougoslavie et le Royaume de Belgique; Echange de notes entre ma République de Croatie et le Royaume de Belgique, Moniteur belge 12.12.1997; Traités et Accords bilatéraux du 30 juillet 1997, conclus entre la République socialiste fédérative de Yougoslavie et le Royaume de Belgique. Echange de notes entre l'ex-République yougoslave de Macédonie et le Royaume de Belgique, Moniteur belge 12.12.1997; Traités et Accords bilatéraux du 8 août 1997, conclus entre la République socialiste fédérative de Yougoslavie et le Royaume de Belgique. Echange de notes entre la République de Slovénie et le Royaume de Belgique, Moniteur belge 12.12.1997; Traités et Accords bilatéraux du 2 novembre 2005, conclu entre la République socialiste fédérative de Yougoslavie et le Royaume de Belgique – Echange de notes entre la Serbie-et-Monténégro et le Royaume de Begique, Moniteur belge, 05.04.2006.*

¹⁸ Modifying the *Convention consulaire entre la Belgique et les Etats-Unis d'Amérique, signée à Washington le 9 mars 1880, Moniteur belge 03.03.1881* (entered into force 25.02.1881).

Publication reference: Not published

Entry into force: 25.09.1968

English title: Consular Treaty between Belgium and Israel

Short summary: Regulatory framework on consular relations

30.

Title: Accord entre la Belgique et le Portugal relatif à la suppression réciproque des taxes consulaires afférentes aux visas de passeports pour des séjours de plus de trois mois, conclu par échanges de lettres, datées à Lisbonne le 31 mai 1965

Publication reference: Not published

Entry into force: 31.05.1965

31.

Title: Accord entre la Belgique et la Maroc relatif à la suppression de la taxe consulaire pour les visas de passeports de plus de trois mois, conclu par échange de lettres datées à Rabat les 29 avril 1965 et 10 mai 1965

Publication reference: Not published

Entry into force: 01.06.1965

32.

Title: Accord entre la Belgique et la Grèce relatif à la suppression réciproque des taxes consulaires afférentes aux visas de passeports pour des séjours de plus de trois mois, conclu par échange de lettres datées à Athènes le 28 avril 1965

Publication reference: Not published

Entry into force: 01.07.1965

33.

Title: Convention consulaire entre le Royaume de Belgique et le Royaume Uni de Grande-Bretagne et d'Irlande du Nord, annexe, 5 protocoles de signature et lettres annexés, signes à Bruxelles le 8 mars 1961¹⁹

Publication reference: Moniteur belge 09.10.1964 and 05.01.1965

Entry into force: 01.10.1964 (and Article 39 para. 2: 11.12.1975)

English title: Consular Treaty between Belgium and the UK

Short summary: Regulatory framework on consular relations

34.

Title: Accord entre la Belgique et les Philippines supprimant, à titre de réciprocité, les taxes consulaires pour les visas de voyage, conclu par échange de lettres, datées à Manille le 17 février 1960

Publication reference: Moniteur belge 25.04.1960

Entry into force: 16.03.1960

35.

Title: Accord de réciprocité entre la Belgique et la Grèce concernant l'octroi d'exemptions fiscales et douanières aux agents consulaires des deux pays, conclu par échange de lettres datées à Bruxelles les 10 et 11 janvier 1956²⁰

Publication reference: Not published

¹⁹ Modifying the *Déclaration de réciprocité entre la Belgique et le Royaume-Uni de Grande-Bretagne et d'Irlande relative à l'arrestation des marins deserteurs*, datées à Londres le 24 janvier 1855 et à Windsor le 8 février 1855, *Moniteur belge* 23.02.1855 (entered into force 08.02.1855); *Accord entre la Belgique et la Grande-Bretagne et l'Irlande du Nord concernant les biens appartenant aux marins belges et britanniques de la marine marchande, qui sont décédés pendant leur service sur des bateaux britanniques ou belges conclu par échange de lettres datées à Londres le 4 janvier 1943* (entered into force on 04.01.1943); *Accord entre la Belgique et la Grande Bretagne en matière d'immunités douaniers au profit des agents consulaires et des agents de chancellerie de carrière des deux pays, conclu par échange de lettres datées à Bruxelles les 19 mars 1951 et 2 avril 1951*. Modified by the *Accord conclu par échange de lettres datées à Bruxelles le 18 février 1982, portant abrogation de l'article 38 de la Convention consulaire entre le Royaume de Belgique et le Royaume-Uni de Grande-Bretagne et l'Irlande du Nord, signée à Bruxelles le 8 mars 1961*, *Moniteur belge* 02.12.1982 (entered into force 18.02.1982).

²⁰ Modifying the *Convention consulaire entre la Belgique et la Grèce, signé à Athènes le 13 mai et 25 mai 1895*, *Moniteur belge* 17.07.1895 (entered into force on 15.07.1895).

Entry into force: 11.01.1956

36.

Title: Accord de reciprocité entre la Belgique et l'Italie en matière d'octroi de l'exemption totale des droits d'entrée pour les marchandises destinées à l'usage personnel des agents consulaires de carrière et pour les fournitures de chancellerie, conclu par échange de lettres datées à Bruxelles les 8 et 22 septembre 1952

Publication reference: Not published

Entry into force: 22.09.1952

37.

Title: Accord entre la Belgique et le Brésil en matière de franchise douanière en faveur des agents diplomatiques et des agents consulaires de carrière, conclu par échange de lettres datées à Bruxelles les 31 juillet 1951 et 11 août 1951²¹

Publication reference: Not published

Entry into force: 11.08.1951

38.

Title: Accord entre la Belgique et les Etats Unis d'Amérique concernant la franchise d'importation des produits destinés aux agents diplomatiques, consulaires et de chancellerie de carrière, conclu par échange de lettres, datées à Bruxelles les 26 février et 28 mai 1948

Publication reference: Not published

Entry into force: 28.05.1948

39.

Title: Accord entre la Belgique et la Roumanie concernant la réduction des taxes consulaires des visas de passeport, conclu par échange de notes, datées à Bucarest le 3 mars 1939

Publication reference: Not published

Entry into force: 20.03.1939

40.

Title: Accord entre la Belgique et l'Italie, concernant les rapatriements consulaires à tarif réduit, conclu par échange de notes, datées les 25 août et 2 novembre 1938

Publication reference: Not published

Entry into force: 02.11.1938

41.

Title: Arrangement international concernant la suppression des visas consulaires sur les patentes de santé, signé à Paris le 22 décembre 1934

Publication reference: Moniteur belge 20.01.1939

Entry into force: 14.02.1936

42.

Title: Arrangement entre la Belgique et la France relatif à l'exemption réciproque du visa consulaire sur les patentes de santé des navires, conclu par échange de notes, datées à Bruxelles les 19 et 28 juillet 1934

Publication reference: Not published

Entry into force: 28.07.1934

43.

Title: Arrangement entre la Belgique et la Norvège relatif à l'exemption réciproque du visa consulaire sur les patentes de santé des navires, conclu par échange de notes, datées à Oslo et à Copenhague les 13 et 20 juillet 1934

Publication reference: Not published

Entry into force: 01.08.1934

44.

Title: Convention consulaire entre la Belgique et l'Estonie, signée à Bruxelles le 8 février 1927

Publication reference: Moniteur belge 21.05.1928

²¹ Modifying the *Accord entre la Belgique et le Brésil en matière de franchise douanière en faveur des agents diplomatiques, des agents de chancellerie de carrière, conclu par échange de lettres, datées à Bruxelles les 26 avril 1951 et 8 mai 1951* (entered into force on 08.05.1951).

Entry into force: 30.04.1928

English title: Consular Treaty between Belgium and Estonia

Short summary: Regulatory framework on consular relations

45.

Title: Accord de réciprocité entre la Belgique et l'Italie pour l'entrée en franchise des emblèmes destinés aux bureaux consulaires, conclu par échange de lettres, datées à Rome les 23 janvier et 23 février 1914

Entry into force: 23.02.1914

46.

Title: Convention consulaire entre la Belgique et la Bolivie, signée à La Paz le 21 août 1911

Publication reference: Moniteur belge 20.09.1913

Entry into force: 04.07.1913

English title: Consular Treaty between Belgium and Bolivia

Short summary: Regulatory framework on consular relations

47.

Title: Convention consulaire entre la Belgique et le Danemark, signée à Copenhague le 26 août 1909

Publication reference: Moniteur belge 27.07.1910

Entry into force: 27.06.1910

English title: Consular Treaty between Belgium and Denmark

Regulatory framework on consular relations

48.

Title: Convention consulaire entre la Belgique et le Pérou, signée à Lima le 18 juillet 1906

Publication reference: Moniteur belge 24.03.1909

Entry into force: 27.02.1909

English title: Consular Treaty between Belgium and Peru

Short summary: Regulatory framework on consular relations

49.

Title: Convention consulaire entre la Belgique et le Nicaragua, signée à Guatemala le 2 octobre 1905

Publication reference: Moniteur belge 09.05.1907

Entry into force: 21.06.1907

English title: Consular Treaty between Belgium and Nicaragua

Short summary: Regulatory framework on consular relations

50.

Title: Convention consulaire entre la Belgique et la Grèce, signée à Athènes le 13 mai et 25 mai 1895²²

Publication reference: Moniteur belge 17.07.1895

Entry into force: 15.07.1895

English title: Consular Treaty between Belgium and Greece

Short summary: Regulatory framework on consular relations

51.

Title: Protocole, signé à Lisbonne le 31 mars 1882, modifiant l'article 12 de la convention consulaire entre la Belgique et le Portugal du 10 novembre 1880

Publication reference: Moniteur belge 20.04.1882

Entry into force: 31.03.1882

52.

Title: Protocole, signé à Bucarest le 30 mars et 11 avril 1881, fixant la portée de l'article 3 de la convention consulaire entre la Belgique et la Roumanie du 31 décembre 1880 et 12 février 1881²³

²² Modified by *Accord de réciprocité entre la Belgique et la Grèce concernant l'octroi d'exemptions fiscales et douanières aux agents consulaires des deux pays, conclu par échange de lettres datées à Bruxelles les 10 et 11 janvier 1956* (entered into force on 11.01.1956).

Publication reference: Moniteur belge 25.04.1881

Entry into force: 11.04.1881

53.

Title: Convention consulaire entre la Belgique et la Roumanie, signée à Bucarest le 31 décembre 1880 / 12 janvier 1881²⁴

Publication reference: Moniteur belge 25.04.1881

Entry into force: 11.04.1881

English title: Consular Treaty between Belgium and Roumania

Short summary: Regulatory framework on consular relations

54.

Title: Convention consulaire entre la Belgique et le Portugal, signée à Lisbonne le 10 novembre 1880²⁵

Publication reference: Moniteur belge 20.04.1882

Entry into force: 31.03.1882

English title: Consular Treaty between Belgium and Portugal

Short summary: Regulatory framework on consular relations

55.

Title: Convention consulaire entre la Belgique et l'Italie, signée à Bruxelles le 22 juillet 1878²⁶

Publication reference: Moniteur belge 22.10.1878

Entry into force: 16.10.1878

English title: Consular Treaty between Belgium and Italy

Short summary: Regulatory framework on consular relations

56.

Title: Convention consulaire entre la Belgique et l'Espagne, signée à Madrid le 19 mars 1870

Publication reference: Moniteur belge 22.06.1870

Entry into force: 31.05.1870

English title: Consular Treaty between Belgium and Spain

Short summary: Regulatory framework on consular relations

Laws and regulations

57.

Title: Loi portant le tarif des taxes consulaires et des droits de chancellerie

Publication reference: Moniteur belge 24.12.1999

Case law

58.

Title: Court of Cassation - *Fromagerie Franco-Suisse "Le Ski"*

Date: 27.5.1971

59.

Title: Court of Cassation - *Sharon*

Date: 12.2.2003

60.

Title: Constitutional Court - *Gemeente Lanaken*

Date: 23.11.1991

61.

²³ Modifying the *Convention consulaire entre la Belgique et la Roumanie, signée à Bucarest le 31 décembre 1880 et 12 janvier 1881, Moniteur belge* 25.04.1881 (entered into force 11.04.1881).

²⁴ Modified by the *Protocol, signé à Bucarest le 30 mars et 11 avril 1881, fixant la portée de l'article 3 de la convention consulaire entre la Belgique et Roumanie du 31 décembre 1880 et 12 février 1881, Moniteur belge* 25.04.1881 (entered into force on 11.04.1881).

²⁵ Modified by the *Protocol, signé à Lisbonne le 31 mars 1882, modifiant l'article 12 de la convention consulaire entre la Belgique et le Portugal du 10 novembre 1880, Moniteur belge* 20.04.1882 (entered into force 31.03.1882).

²⁶ Modifying the *Convention entre la Belgique et la Toscane relative à l'arrestation des marins déserteurs, conclue par échange de notes, datées à Florence et à Rome, les 16 juillet et 19 juillet 1855, Moniteur belge* 31.07.1855 (entered into force 30.08.1855).

Title: Constitutional Court - *Europese Scholen*

Date: 11.3.1994

62.

Title: Council of State - *Orfinger*

Date: 5.11.1996



Bulgaria - България (BG)

1. Introduction

This Report presents the legal framework and the administrative practice on consular and diplomatic protection provided by the Republic of Bulgaria to its nationals and to EU citizens in third countries. The report reflects the legal developments as of 1 June 2010.

The Report is based on the applicable instruments (consular conventions, etc.), on the available handbooks on diplomatic and consular law in Bulgaria, the Bulgarian legal information systems *Ciela*¹ (accessible to subscribers only) and *Lex.bg*² (legislation available for free, other instruments to subscribers only), the website of the Bulgarian Ministry of Foreign Affairs³ and the websites of several selected embassies. Several interviews with officials from Bulgarian missions abroad were made as well. Case studies are reported on the basis of the information available in the popular press.

1.1. Terminology - National acronyms and definitions

MFA (МВНР) - Bulgarian Ministry of Foreign Affairs (Министерство на външните работи)

SG (ДВ) - Bulgarian State Gazette (Държавен вестник) (official publication where all normative instruments, international treaties included, are promulgated as condition for their direct applicability internally).

2. Legal framework

The legal framework for diplomatic and consular protection in Bulgaria is established by multilateral treaties, i.e., the Vienna Convention on Diplomatic Relations of 1961 and Vienna Convention on Consular Relations of 1963, about 45 bilateral treaties, informal arrangements, State policy and practice as well as the respective stipulations of the TEU and TFEU. It is important to note that **Bulgaria has no general law on the issue and the detailed implementation of these instruments is governed by the administrative practice. Thus the provision of consular services is not uniform worldwide but may vary greatly from mission to mission** (see more details in the *chapeaux* of [Section 4](#)). In principle, all of the Bulgarian diplomatic and/or consular missions (“the missions”) are controlled by the Ministry of Foreign Affairs (“MFA”), unlike some other Member States where other ministries (i.e., of justice) may be take up responsibility in certain matters. However, **since 2009 there is a cabinet minister (without portfolio) who is responsible for the relations with the Bulgarians abroad**, therefore the missions may take instructions on certain matters from him. So far he has been dealing only with consular services in relation to naturalizations and therefore the change has had no substantive relevance for the issues discussed here, but this may change in the future.

¹ www.ciela.net.

² www.lex.bg.

³ www.mfa.bg.

There is no explicit *right to consular or diplomatic protection* established by the Bulgarian positive law. However, **Art. 25 (5) of the Constitution** stipulates that “Any Bulgarian citizen abroad shall be accorded the protection of the Republic of Bulgaria” and **Art. 26, para 1 thereof** emphasizes that the citizens enjoy their constitutional rights *wherever they are*. Both of these should be interpreted to impose obligations to protect respectively the citizens and their constitutional rights on the diplomatic and consular missions when citizens are abroad. Further, the **Administrative Procedure Act** applies to any acts and services provided to citizens, legal entities and foreigners by any Bulgarian authorities (including those outside its territory – *per argumentum ex* Art. 3), therefore the failures of the authorities in providing these services are subjected to judicial review. Even though it would be surprising to the Bulgarian diplomats to have their services judicially reviewed, there is neither law, nor doctrine to prevent the application of the general provisions of the administrative law to them. Nevertheless, **so far there was no reported court case involving consular protection and most importantly, no case when such right was construed by the courts.** Further to this, European citizens should rely on the right to consular protection conferred upon them by the treaties and Decision 95/553 (See [Section 2.3](#) below).

2.1. International law

Bulgaria **is a Party** to the following multilateral conventions:

- Vienna Convention on Diplomatic Relations.⁴ A reservation concerning Art. 11, par. 1 and declarations concerning Art. 48 and Art. 50 have been made.
 - Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning the Compulsory Settlement of Disputes.⁵
- Vienna Convention on Consular Relations⁶. A declaration on the interpretation of Art. 31, par. 2 has been made.
 - Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes.⁷
 - Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality.⁸

Bulgaria **is not a party** to the following relevant multilateral conventions:

- Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning Acquisition of Nationality.
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80).
- European Convention on the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular Officers, London, June 7, 1968 (ETS 63).

Further to these, Bulgaria has concluded about 45 bilateral treaties on consular protection listed in [Section 9](#). It should be noted that several of its bilateral treaties on other issues, esp. on friendship and trade may contain also provisions on consular protection. A recent agreement was concluded between the Bulgarian and Montenegrin MFA. It basically provides that Bulgarian missions in Armenia, Azerbaijan, Georgia, Kazakhstan and Moldova shall represent Montenegro in visa related issues and provide consular protection of Montenegrin citizens in case of need (Art 1). Upon receipt of

⁴ Promulgated in SG No. 28/1968.

⁵ Promulgated in SG No. 67/1989.

⁶ Promulgated in SG No. 42/1990.

⁷ Promulgated in SG No. 42/1990.

⁸ Promulgated in SG No. 42/1990.

visa application, Bulgarian missions contact the Montenegrin authorities, and upon receipt of their written consent issue visa (for Montenegro, Art. 5). Further, they provide consular protection to citizens in case of arrest, issue ETDs (for travel to Montenegro) and extend financial support (after prior receipt of funds from Montenegro).

2.2. Transposition of international law into national law

Bulgaria is a monist country, i.e., in Bulgaria the international instruments need not be re-enacted in a separate instrument adopted by the national legislator. **The international treaties which are duly ratified and promulgated become part of the national law and have direct applicability. Further, by virtue of Article 5, para 4 of the Constitution they have precedence over any contradicting acts of domestic origin.** Thus, Bulgarian and EU citizens may claim their rights from the respective treaties in their relations with the Bulgarian authorities, mission included. Yet, this is of limited effect in practice, as the relevant international instruments often contain very broad terms which need further specification by implementing acts and these so far are not available.

2.3. Implementation of European law into national law

As a general rule Art. 23 TFEU as well as the rest of the *acquis communautaire* is **directly applicable** and the European citizens should be able to rely on the rights conferred by those instruments directly. This is important because of the lack of general law on consular services, and thus, no *explicit* provision conferring such *right* to European citizens. Thus, **Council Decision 95/553/EC is not implemented into national legislation as a matter of general rule, nevertheless the missions should apply it as a matter of administrative practice. Further, it is implemented in some of the specific provisions of the sector-specific instruments**, as indicated below. Interviewed officials confirmed that they treat EU citizens as if they are Bulgarian nationals, i.e., as per Art. 3 of the Decision. **It should be noted that Bulgarian missions generally do not provide any financial assistance, therefore the requirement for prior authorization or repayment undertaking as per Art. 6 thereof is not applicable** (On the substantive protection as per Art. 5 see [Sections 4.2-4.6](#) below respectively).

Council Decision 96/409/CFSP is implemented in the Bulgarian Identity Documents Act. More specifically, Art. 39b thereof stipulates that Emergency Travel Documents should be issued to European citizens if there is no mission of their home Member State in the host State. See more details in [section 5](#) below⁹.

2.4. National law

There is no general regulation of diplomatic and consular protection, but **there are several sector-specific instruments which may contain provisions relevant for the consular services:**

- *Diplomatic Service Act* (Закон за дипломатическата служба)¹⁰ - regulates mainly the structure and organisations of the missions and career development of officials, contains few substantive provisions on the consular services.

⁹ The Regulation 1683/95/EC of 29 May 1995 laying down a uniform format for visas was implemented into the *Foreigners in the Republic of Bulgaria Act* (last amendment 29 December 2009) whose Art. 9b stipulates that the visa is issued as a uniform sticker according to the pattern of the EU.

¹⁰ Promulgated SG 78/2007, last amendment SG 42/2009.

- *Regulation on the Structure of the Ministry of Foreign Affairs* (Устройствен правилник на Министерството на външните работи).¹¹
- *Regulation on the Assignment and Acceptance of Honorary (unpaid) Consular Officials* (Наредба относно реда за назначаване и приемане на почетни (нешатни) консулски длъжностни лица)¹² and *Instruction for its implementation* (Инструкция No 1 от 9 април 2004 г. относно реда за назначаване и приемане на почетни (нешатни) консулски длъжностни лица).¹³
- *Bulgarian Identity Documents Act* (Закон за българските лични документи)¹⁴ - regulates all kinds of IDs issued to Bulgarians, including ETDs. There is also accompanying secondary legislation - *Regulation on the Issuance of Bulgarian Identity Documents* (Правилник за издаване на български лични документи).¹⁵
- *Bulgarian Citizenship Act* (Закон за българското гражданство).¹⁶
- *Bulgarians Living Abroad Act* (Закон за българите, живеещи извън Република България).¹⁷
- *Regulation on Legalisations, Verifications and Translations of Documents* (Правилник за легализациите, заверките и преводите на документи и други книжа).¹⁸
- *Civil Status Registration Act* (Закон за гражданска регистрация).¹⁹
- *Foreigners in Bulgaria Act*²⁰ and the Regulation on its application²¹ as far as issuance of visas by the missions to family members may be concerned.
- *EU Citizens and Families Entry, Stay and Departure in the Republic of Bulgaria Act* (Закон за влизането, пребиваването и напускането на Република България на гражданите на европейския съюз и членовете на техните семейства).²²
- *Ordinance on the conditions and procedure for issuance of visas* (НУРИВ – Наредба за условията и реда издаването на визи и определяне на визовия режим).²³
- *Tariff 3 on Consular Fees* (Тарифа № 3 за таксите, които се събират за консулско обслужване в системата на Министерството на външните работи по Закона за държавните такси).²⁴

As was discussed in the beginning of the present Section **there is no explicit and general right to consular protection in the text of any of these laws, however such right can be construed from the Constitution as far as Bulgarian citizens are**

¹¹ Promulgated SG 64/2008.

¹² Promulgated SG 114/2003.

¹³ Promulgated SG 37/2004.

¹⁴ Promulgated SG 93/1998, last amendment SG 26/2010.

¹⁵ Promulgated SG 12/2010.

¹⁶ Promulgated SG 136/1998, last amendment SG 33/2010.

¹⁷ Promulgated SG 30/2000.

¹⁸ Promulgated SG 73/1958, last amendment SG 103/1990.

¹⁹ Promulgated SG 67/1999, last amendment SG 30/2010.

²⁰ Promulgated SG 153/1998, last amendment SG 103/2009.

²¹ Promulgated SG 43/2000, last amendment SG 44/2008.

²² Promulgated SG 80/2006, last amendment SG 102/2009.

²³ Promulgated SG 44/2008.

²⁴ Promulgated SG 3/2008, last amendment SG 18/2010.

concerned, and the applicable European legislation as far as European citizens are concerned as well as on the basis of the Administrative procedure act (for both cases). The aggrieved citizen may sue the mission for failure to act, for implicit refusal, for damages and for illegality of the action. However this legal possibility has not been tried so far, and there are no reported cases of judicial protection against acts or omissions of consular authorities. **The other possible way is to file a complaint to the Ombudsman for any case of maladministration by the consular services, but this was never tried as well.**

There is current debate on the consular handling of citizenship application and a major amendment to the Bulgarian Citizenship Act was just adopted mainly to speed up the procedures of granting Bulgarian citizenship to foreign nationals from Bulgarian origin. However this is not directly related to the issue of consular protection which is the subject of this Report. **Yet, in 2009 a Minister in charge of the issues of Bulgarians abroad was appointed (for the first time ever) so further changes in any related areas may be expected.**

2.5. Documentation of consular protection

There are three books on Diplomatic and Consular Law available *in Bulgarian*, which summarize the established practice in the area:

- Ivan Vladimirov, *Diplomatic and Consular law*, 3rd ed., Sofia, Romina, 2007, 232 p. (Иван Владимиров, Дипломатическо и консулско право, 2007).
- Dimitar Mashev, *Consular law*, Sofia, Sofi-R, 1993, 240 p. (Димитър Машев, Консулско право, 1993).
- Dimitar Mashev, *Diplomatic law*, Sofia, Sofi-R, 1992, 400 p. (Димитър Машев, Дипломатическо право, 1992).

There is no case law on consular protection developed by any court in Bulgaria (despite that the missions' act are in principle subjected to judicial review).

There are no compilations or reporters of administrative practice either, the missions personnel are learning by doing it.

There are no periodicals dedicated to international law in Bulgarian. The two most prestigious general law journals are *Suvremenno Pravo* (Contemporary law) and *Pravna Misul* (Legal Thought); they occasionally publish articles on international law, but the issue of consular protection was hardly ever discussed there.

2.6. Information to citizens on consular protection

Bulgaria does not maintain a dedicated web site or general advisory service on consular protection but there is relevant information on the matter on the MFA web site which has been recently refurbished²⁵ (in Bulgarian only, there should be a version in English, but it is presently under construction). It provides telephone and fax numbers of all Bulgarian missions as well as basic information for the services provided. Most of the entries from the pages dedicated to a certain embassy link to the general information about consular services and there is usually no specific information for the services of this particular missions. This suggests that all missions should provide uniform services, however the actual practice of the missions around the world may vary.

²⁵ www.mfa.government.bg.

Some of the Bulgarian missions have their own web sites, which do not conform to a single pattern and the information provided by them varies. The site of the embassy in London²⁶ is amongst the most informative, while that in Rome²⁷ provides nothing but contacts and working hours. Surprisingly, the MFA web site provides contacts of the missions, but not links to their web-sites, therefore they should be sought through web search engines.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Bulgarian bilateral agreements on consular protection with third countries do not include provisions on protecting Union citizens in third countries. Although Bulgarian missions are aware of their Art. 23 obligation to provide such protection and express readiness to provide EU citizens with protection equal to that of its nationals, Bulgaria has not informed third countries for extended protection as required by Art. 8 of the Vienna Convention on Consular Relations. This is even more so with regards to the possibility to extend Bulgarian consular protection to Union citizens' family members who are not nationals of a Member State.

However, it should be borne in mind that the Bulgarian network of missions around the world is not very extensive (see Section 4) and there will be relatively few cases where citizens of another Member State will be eligible for protection by Bulgarian missions. Further, **it should be noted that most of the bilateral treaties on consular protection were concluded before the EU accession in 2007 (and as a matter of fact even before 1992 when EU citizenship came into existence). Nevertheless, even in the most recent ones – the ones with Uzbekistan (2005) and with Armenia (2006) there is no mentioning of protection to EU citizens whatsoever.**

3.2. Statistical data on consular practice

Bulgaria provides regularly the standard consular services to its citizens and now is obliged to provide them to all European citizens. So far there is no information that this happens on regular basis, and **the Bulgarian Ministry of Foreign Affairs does not maintain any statistical database concerning consular practice.**

4. Consular protection in detail

Bulgaria has diplomatic relationships with about 180 countries around the world, but **only about 85 embassies and about 20 consulates.** The embassies perform consular services either themselves, or via consular department attached to them. Thus, its network of missions is not very extensive and there are few third countries where the majority of the other EU Member States are not represented so Art. 23 protection will be very rarely triggered.

Bulgaria has a network of honorary consuls as well, who are not necessarily Bulgarian nationals and are not employees of the MFA. However honorary consuls generally are not entitled to perform any consular services. Their function is defined by *Regulation on the Assignment and Acceptance of Honorary (unpaid) Consular*

²⁶ www.bulgarianembassy-london.org

²⁷ www.bulemb.it

Officials but this is conditioned on the local practices and the willingness of the person to engage²⁸.

An extraordinary example is the honorary consul in Dundee, Scotland, who is quite exceptionally authorized to perform certain consular services, like issuing of certificates, verification of signatures on private documents, legalization of translations and issuing of declarations for travelling of children. Yet he cannot accept applications for issuance of passports and even ETDs on behalf of Bulgaria, despite the Regulation allows the honorary consuls to be so authorised *ad hoc*. The exceptional authorisation to perform some consular services was result of the active lobbying of the ex-pat community and the consul himself and is quite unlikely to have been repeated elsewhere.

So far there are no arrangements for burden-sharing, co-location etc. between Bulgaria and other Member States, nor are discussed in the public space despite the current effort of all governmental departments to cut costs. There are however few cases where Bulgarian missions, by virtue of bilateral treaties represent other states in third countries. An example is the Bulgarian mission in Georgia, which represents also Hungary. However, this is an entirely Bulgarian mission, not a joint mission of the two Member States.

4.1. Right to consular (and diplomatic) protection

In Bulgaria the right to consular protection is to be construed on the basis of the Constitution and the Administrative Procedure Act (APA). While the provision of the former applies only to citizens, the latter explicitly extends its protection to all cases involving foreigners engaged in proceedings before Bulgarian authorities abroad, i.e., diplomatic and consular missions. **The APA is important for consular protection, as it denies discretion to the government in provision of services, including consular ones**²⁹. Further, by virtue of Art. 23 TFEU and the non-discrimination principle any EU citizens shall enjoy the same protection as the Bulgarian nationals. The interviewed Bulgarian consular personnel express commitment to provide consular protection to EU citizens, however they have not had such cases at all.

It will be difficult to construe the above mentioned Bulgarian laws to oblige missions to protect family members of EU citizens who are not EU citizens themselves, recognized refugees, stateless persons or any other persons who are not covered by Art. 23 TFEU. Thus, the APA is in principle applicable to any foreigners who are in Bulgaria or are participants in administrative proceedings before its authorities outside it (Art. 3). This seems to extend the APA protection to all such persons, but only if they already are in Bulgaria. With regard to the diplomatic and consular missions APA will apply only after they have started proceedings, but non-nationals and non-Europeans must have substantive ground to start such proceedings and the sector-specific legislation generally does not provide such.

There are no publicly known cases where a refugee recognized as such in Bulgaria or EU has requested protection from Bulgarian missions.

²⁸ Thus, for example, in Italy, the honorary consul in Naples is reportedly considerably engaged with variety of issues of the (sizable) expat community there, while the one in Florence is completely inaccessible to citizens.

²⁹ Unlike the case of France for example, where the doctrine of *acte du gouvernement* would allow the missions to arbitrarily deny protection.

4.2. Assistance in cases of death, Identifying and repatriating remains

When Bulgarian missions are officially informed about the death of Bulgarian citizens **they inform the national authorities which seek and contact the relatives of the deceased.** They **assist** the relatives in obtaining a death certificate and other documents which are necessary for the repatriation of the remains. **Consular authorities are competent to issue death certificates themselves, in very exceptional cases where the authorities of some host countries are unable to do that.** Missions may also arrange for the body to be buried or cremated in the host country. As a matter of practical arrangement if they are authorized by the relatives they would hire a funerary agency for these tasks.

For all of these services it is not necessary for the relatives to travel to the host country but they will be required to put a **deposit** covering the costs of transportation or funeral in the MFA in advance.

A short notice of the death may be published on the MFA site as well.

The census registers in Bulgaria are maintained by the local authorities and the missions do not have direct access to them. Therefore missions cannot register the death themselves and it will be responsibility of the relatives to notify the local authorities.

4.3. Assistance in cases of serious accident or serious illness

In cases of serious accidents or illness Bulgarian missions **can inform the relatives, visit the sick in hospital or recommend clinics and doctors.** However they cannot provide any financial assistance even if emergency treatment is necessary. Thus, if a Bulgarian has health coverage in Bulgaria, but does not have a European health card, they will assist his relatives in urgently obtaining one for him, but will not pay for the emergency treatment themselves.

4.4. Assistance in cases of arrest or detention

Upon request of the citizen concerned or upon notification by the authorities of the host State the missions will inform the national authorities. They maintain a hotline which is available for emergency calls outside the office hours. **The personnel will visit the detainee and will help arrange for him or her to be visited by relatives.** The missions will provide **help** in finding appropriate legal advice but will not provide any advice themselves nor can they finance this. They will try to assure that the detainee is subject to the same conditions as the detainees of the host country. The missions cannot provide a translator during the proceeding.

Thus, there were two Bulgarian journalists on board of the “Gaza Freedom Flotilla” who were detained by Israel on 31 May. The MFA immediately announced their presence and condition in a press release and the mission in Tel Aviv managed to visit them (claiming to have been the first diplomatic mission who succeeded to contact their nationals detained in that incident).

4.5. Assistance to victims of violent crime

Bulgaria has no schemes for compensation of Bulgarian citizens that have suffered harm abroad (nor at home) regardless of the nature of the harm.

Bulgarian missions provide to victims of violent crime **limited medical assistance** (see [Section 4.3](#)) and **recommend legal counselling.** Where documents (ID or passport) are stolen, the missions can issue an ETD for a fee. If the citizen has no money, the ETD will be issued only after a relative has deposited sufficient funds on his behalf in the

MFA. The fee may be waived if he or she produces evidence (e.g., protocol from the local police) that he or she was not responsible for the loss of the original document (Art 12, para 3 of the Tariff on Consular Fees).

4.6. Relief and repatriation of distressed citizens

Bulgarian missions provide advice and assistance on a **case-by-case basis**. Unlike some other Member States **there are no criteria to distinguish the cases whose urgency or gravity merit assistance and which do not**.

Thus, **in case of great emergency evacuations can be organized**. A recent example is the shipwreck in Ochrid lake, Macedonia in 2009, when the government plane with emergency teams was sent to repatriate the surviving Bulgarian citizens (there is no information for any EU citizens to have requested help in this case). However, this event received very high media attention and this prompted both the prime-minister and the president to get involved, and not the consular missions themselves. In cases of lower media profile this will not necessarily be the case.

4.6.1. Natural disasters

Bulgarian missions are **seeking contacts with citizens in order to inform relatives in Bulgaria, visit the place and help with the organization of the evacuation**. Normally, when a major catastrophe is reported in the world media the respective mission seeks whether there are Bulgarians involved, and the MFA announces the result in the national media. These investigations are routinely limited to Bulgarian citizens only. Thus, during the **Sumatra earthquake in 2005** the few Bulgarians known to be resident were contacted by the embassy, and the MFA checked with the Indonesian embassy in Sofia for any tourist visas issued to Bulgarians recently.

During the latest volcanic ashes crisis that blocked the air-traffic in Europe, the various Bulgarian missions provided limited assistance to about 200 Bulgarian citizens blocked around Europe – mostly with advice on cheap hostels and alternative means of transport, but there was one case of a bus sent to London to bring home a group of high school students, who were in the meantime provided with subsistence money from the embassy employees' own pockets.

4.6.2. Terrorist acts

In case of a terrorist act **Bulgarian missions contact the authorities of the host country to provide support to the involved citizens**. In cooperation with these authorities the missions get involved to the extent possible in the release of Bulgarian hostages.

Currently (26 May 2010) there are two ships held hostage by Somali pirates with about 20 Bulgarian sailors on boards. One of the ships is owned by a British company, which is negotiating a ransom for their release for 5 months already with no success. The second ship is sailing under Bulgarian flag and has been taken hostage on 11 May 2010. The web site of MFA only provides information on these events and that a crisis group is working on the matter. There is no information whether the MFA or any mission is engaged with any more active measures to protect the sailors or the ship. Similarly, another ship with Bulgarian sailors was recently released from hostage when the British ship-owner paid ransom without any substantive engagement of the Bulgarian authorities.

4.6.3. Pandemics

Bulgarian consular and diplomatic missions should **contact the local authorities** in order to provide support to Bulgarian citizens if affected by pandemics. There was no reported case of Bulgarian affected in recent pandemics (swine flu, avian flu, TORS) while abroad, so their handling of such cases remains to be tested.

4.6.4. Military conflicts

In cases of civil unrest or military conflicts Bulgarian authorities habitually issue **warnings** to Bulgarian citizens to abstain from traveling to those respective countries. There are no recent cases of evacuations organized by the Bulgarian missions, nor has there been any publicly known necessity for this.

4.6.5. Financial advances

Bulgarian missions do not provide any financial assistance, in any of the cases discussed in Sections 4.2 to 4.6. **Missions do not have any funds dedicated for such assistance and may only help in transferring of money from a relative in Bulgaria to the citizen in the host country.**

Only in extremely exceptional case the missions may provide cash, and only after special authorisation by the MFA.

The missions may also advise citizens to contact certain charities in the host country and sometimes their reference may be conducive to receiving the assistance of the latter.

During the air-traffic crisis in Northern Europe in April 2010 a group of students, who were blocked in London, were provided with financial assistance by the embassy personnel out of their own pockets.

4.7. Consular fees

The fees for consular services are regulated by the *Tariff on Consular Fees*. In principle the fees are centrally determined by the Council of Ministers, however they can be further specified (e.g., if they have to be established currency other than BGN or Euro) by the head of the respective mission in conformity to the *Tariff*; the fees thus determined by different missions in the same host country should be equal. Where the fees collected by other states for similar services are substantively higher than those of the *Tariff*, the MFA may increase the fees for the respective countries.

For speedy services, or in cases of emergency services, services out of the mission premises or out of its office hours, the fees may be increased with 50 to 100 per cent. In specific cases, when State interest requires some citizens may be exempted from paying fees.

4.8 Reimbursement of the assisting State

Bulgarian missions do not provide any financial assistance to its citizens in the course of consular protection, and a fortiori this applies to EU citizens assisted pursuant to Art. 23 TFEU. Therefore, the application of Art. 6, para 4 of Decision 95/553/EC will not be triggered. However, if an EU citizen is assisted by a Bulgarian mission, and his or her home State permits financial assistance as per Art. 6, para 1 of that Decision, there will be no obstacle to the Bulgarian mission to provide it and reclaim it from the person's home State. This will be comparable to a case of relatives depositing funds in the MFA on behalf of the citizen.

In the opposite case, when a Bulgarian citizen has requested consular assistance from another Member State, which can provide financial assistance to its citizens it can be presumed that Bulgaria will not permit assistance as per Art. 6, para 1 of Decision 95/553/EC.

4.9. Case studies, in particular problematic practices

See previous sections [4.4](#), [4.6](#), [4.6.1](#), [4.6.2](#), [4.6.5](#).

5. Emergency travel document (ETD)

According to the *Bulgarian Identity Documents Act* the Bulgarian diplomatic and consular missions can issue temporary passports **to Bulgarian citizens who have no valid travel or identification documents and to European citizens, who have their documents lost or stolen when the citizen's State of origin has no mission in the host State**. Thus, literally reading the law, the grounds for issuance ETDs to EU citizens are slightly narrower than the grounds for issuance of ETDs to Bulgarians and also narrower than those of Decision 96/409/CFSP (which includes also destroyed and temporarily inaccessible documents). Yet the difference is not substantive and is expected not to matter for the administrative practice which is yet to be established.

The applications for passports and ETDs are made in person in the missions, who register the data in an electronic register and, if the applicant is Bulgarian, contact the Ministry of Internal Affairs via MFA. Within 3 days the latter has to communicate its opinion through the MFA back to the mission which can issue the ETD after its receipt. The EU citizens have to file their application in English or French. They are notified to the MFA, which contacts the EU citizen's home State and the ETD can be issued by the mission only after the approvals of both the MFA and the home State. The receiving State also may be contacted, "whenever necessary."

It should be noted that although all missions can issue ETDs, this in effect applies only to passports and Ids, but not to **driving licenses**. No Bulgarian mission abroad can issue driving licenses in any circumstances, nor even can accept and forward home applications for such. This might be serious problem for emergency travel if the person is with a car in a third country. The only solution for him/her would be to leave the car, travel to Bulgaria by other means, get a new driving license issued by the competent domestic services and go back again to the host State to fetch the car.

The honorary consuls cannot issue documents in general and cannot issue ETDs neither to Bulgarian, nor to EU citizens.

6. Relevant diplomatic protection

There is no explicit right to diplomatic protection in Bulgaria. However, such right should be derived on the basis of the Constitution and the Administrative Procedure Act as described in [Section 4.1](#), above. This right is extended to EU citizens only by virtue of Art. 23 TFEU and although there is no respective provision of the national law, the Treaty Article applies directly.

The right to diplomatic protection cannot be extended to family members who are not themselves EU nationals.

7. Exercise of consular functions for expats

Bulgaria has a relatively high number of expats, significant number of whom emigrated during the communism and even greater number who emigrated for economic reasons

afterwards. The biggest emigrant communities of citizens are in US – 200.000 (50.000 in Chicago alone), Greece – 150.000, Turkey – 100.000, Spain – 70.000, Germany – 70.000, UK – 40.000 in London alone. Further to this, there are several compact ‘traditional’ communities of ethnic Bulgarians living in Moldova, Hungary, Ukraine, Serbia since 18th century and before, who usually do not have Bulgarian citizenship. A special **Agency for Bulgarians Abroad** was established in 1993, but it has only communication, cultural and educational functions, while the consular services are provided by the respective missions. A cabinet minister in charge of the issues of the Bulgarians abroad was appointed in 2009, who engages himself mainly with the issues of naturalization of the Bulgarians from the traditional communities.

The consular services provided habitually by the consular missions include the following:

- **Issuance of civil status documents** (marital status, criminal convictions certificate, etc). These documents are generally issued after the respective service in Bulgaria is formally requested by the mission and can be very lengthy. Missions can issue some documents which are not available in Bulgaria, but are habitually required by the authorities in the host State, in the form requested by that state (e.g., *nulla osta* in Italy).
- **Execution of marriages**. The missions can execute marriages if at least one of the spouses is a national. However, as the civil status registries are maintained by the local authorities in Bulgaria, such marriages must be notified to these authorities by the spouses, and not by the missions.
- **Notary certifications**. The missions can ascertain the dates and signatures of all sorts of private documents.
- **Issuance or prolongation of passports (in cases other than issuance of ETDs)**. However, only the missions which have the necessary technical equipment can currently accept application for passports.
- **Polling stations**. All missions organise elections for national parliament and for Bulgarian representatives in the European parliament, but not for local elections.

Honorary consuls cannot perform any of these functions.

The development of e-government in Bulgaria is presently slow and has not reached the MFA and the consular missions at all. Moreover, missions do not encourage communications by post, and **in most of the cases any requests for services or applications must be made in person**, thus the citizens sometimes have to travel at long distances for otherwise trivial issues.

The closing of missions and layoffs of personnel are classified information, but all governmental departments are presently required to cut 20% of their costs, so it can be expected that this is happening.

8. Summary

Bulgaria is a party to the most important international treaties on consular relations and has concluded a number of bilateral treaties. It has no general statute or other instrument of domestic legislation on the matter and therefore the detailed operation of the consular service is to a great extent left to administrative practice. There is no explicit right to consular or diplomatic protection in the general legislation, but such rights can be drawn directly from the Constitution for Bulgarians and from the Treaties for Europeans. Further, there are many provisions in the sector-specific legislation which provide these rights explicitly on an issue-by-issue basis.

Bulgaria has not implemented Art. 23 TFEU explicitly in its domestic law, but it is directly applicable and its diplomatic and consular missions would extend their services to the EU citizens as a matter of practice. **However, they would not extend their protection to the members of the families of EU citizens who are themselves not nationals of another Member State.**

9. List of important documents

International treaties and related national instruments

1.

Title: Виенска конвенция за консулските отношения

Publication reference: ДВ бр. 42 от 1989 г., текст – ДВ, бр. 42 от 1990 г.

Entry into force: 19.03.1967

English title: Vienna Convention on Consular Relations, Vienna, 24 April 1963

2.

Title: Факултативен протокол към Виенска конвенция за консулските отношения за задължително решаване на спорове

Publication reference: ДВ бр. 42 от 1989 г., текст – ДВ, бр. 42 от 1990 г.

Entry into force: 19.03.1967

English title: Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes, Vienna, 24 April 1963

3.

Title: Факултативен протокол към Виенска конвенция за консулските отношения за придобиване на гражданство

Publication reference: ДВ бр. 42 от 1989 г., текст – ДВ, бр. 42 от 1990 г.

Entry into force: 19.03.1967

English title: Vienna Convention on Consular Relations Optional Protocol concerning the Acquisition of Nationality, Vienna, 24 April 1963

4.

Title: ВИЕНСКА КОНВЕНЦИЯ ЗА ДИПЛОМАТИЧЕСКИТЕ ОТНОШЕНИЯ

Publication reference: ДВ бр. 28 от 1968 г.

Entry into force: 17.01.1968

English title: Vienna Convention on Diplomatic Relations, Vienna, 18 April 1961

5.

Title: ФАКУЛТАТИВЕН ПРОТОКОЛ ЗА ЗАДЪЛЖИТЕЛНОТО РЕШАВАНЕ НА СПОРОВЕТЕ ПО ТЪЛКУВАНЕТО И ПРИЛАГАНЕТО НА ВИЕНСКАТА КОНВЕНЦИЯ ЗА ДИПЛОМАТИЧЕСКИТЕ ОТНОШЕНИЯ

Publication reference: ДВ бр. 67 от 1989 г.

Entry into force: 06.06.1989

English title: Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning the Compulsory Settlement of Disputes, Vienna, 24 April 1963

6.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И ГЕРМАНСКАТА ДЕМОКРАТИЧНА РЕПУБЛИКА

Publication reference: ДВ бр. 79 от 1972 г.

Entry into force: 12.10.1972

English title: Consular Convention between People's Republic of Bulgaria and the German Democratic Republic

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

7.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И ДЕМОКРАТИЧНА РЕПУБЛИКА АФГАНИСТАН

Publication reference: ДВ бр. 100 от 1979 г.

Entry into force: 21.08.1980

English title: Consular Convention between People's Republic of Bulgaria and the Democratic Republic of Afghanistan

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

8.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И КИТАЙСКАТА НАРОДНА РЕПУБЛИКА

Publication reference: ДВ бр. 69 от 1987 г.

Entry into force: 02.01.1988

English title: Consular Convention between People's Republic of Bulgaria and People's Republic of China

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

9.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И КОРЕЙСКАТА НАРОДНОДЕМОКРАТИЧНА РЕПУБЛИКА

Publication reference: ДВ бр. 95 от 1977 г.

Entry into force: 07.12.1977

English title: Consular Convention between People's Republic of Bulgaria and Democratic People's Republic of Korea

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

10.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И КРАЛСТВО БЕЛГИЯ

Publication reference: ДВ бр. 2 от 1979 г.

Entry into force: 01.03.1981

English title: Consular Convention between People's Republic of Bulgaria and Kingdom of Belgium

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

11.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И КРАЛСТВО ГЪРЦИЯ

Publication reference: ДВ бр. 70 от 1973 г.

Entry into force: 22.01.1975

English title: Consular Convention between People's Republic of Bulgaria and Kingdom of Greece

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

12.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И ЛАОСКАТА НАРОДНОДЕМОКРАТИЧНА РЕПУБЛИКА

Publication reference: ДВ бр. 81 от 1985 г.

Entry into force: 08.04.1985

English title: Consular Convention between People's Republic of Bulgaria and Democratic People's Republic of Laos

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

13.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И МОНГОЛСКАТА НАРОДНА РЕПУБЛИКА

Publication reference: ДВ бр. 15 от 1964 г.

Entry into force: 17.03.1964

English title: Consular Convention between People's Republic of Bulgaria and People's Republic of Mongolia

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

14.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И НАРОДНА ДЕМОКРАТИЧНА РЕПУБЛИКА ЙЕМЕН

Publication reference: ДВ бр. 31 от 1980 г.

Entry into force: 11.12.1981

English title: Consular Convention between People's Republic of Bulgaria and Democratic People's Republic of Yemen

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

15.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И НАРОДНА РЕПУБЛИКА КАМПУЧИЯ

Publication reference: ДВ бр. 52 от 1981 г.

Entry into force: 19.07.1981

English title: Consular Convention between People's Republic of Bulgaria and People's Republic of Kampuchea

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

16.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И ОБЕДИНЕНОТО КРАЛСТВО НА ВЕЛИКОБРИТАНИЯ И СЕВЕРНА ИРЛАНДИЯ

Publication reference: ДВ бр. 38 от 1969 г.

Entry into force: 21.12.1968

English title: Consular Convention between People's Republic of Bulgaria and United Kingdom of Great Britain and Northern Ireland

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

17.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И ПОЛСКАТА НАРОДНА РЕПУБЛИКА

Publication reference: ДВ бр. 24 от 1962 г.

Entry into force: 20.06.1973

English title: Consular Convention between People's Republic of Bulgaria and People's Republic of Poland

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

18.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И ПОЛСКАТА НАРОДНА РЕПУБЛИКА

Publication reference: ДВ бр. 79 от 1973 г.

Entry into force: 11.05.1994

English title: Consular Convention between People's Republic of Bulgaria and People's Republic of Poland

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

19.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ РЕПУБЛИКА БЪЛГАРИЯ И РЕПУБЛИКА ПОЛША

Publication reference: ДВ бр. 16 от 2000 г.

Entry into force: 11.05.1994

English title: Consular Convention between Republic of Bulgaria and Republic of Poland

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

20.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И РЕПУБЛИКА АВСТРИЯ

Publication reference: ДВ бр. 59 от 1975 г.

Entry into force: 12.07.1975

English title: Consular Convention between People's Republic of Bulgaria and Republic of Austria

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

21.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И РЕПУБЛИКА ГАНА

Publication reference: ДВ бр. 12 от 1987 г.

Entry into force: 11.04.1987

English title: Consular Convention between People's Republic of Bulgaria and Republic of Ghana

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

22.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И РЕПУБЛИКА ЕКВАДОР

Publication reference: ДВ бр. 87 от 1996 г.

Entry into force: 19.06.1987

English title: Consular Convention between People's Republic of Bulgaria and Republic of Ecuador

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

23.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И РЕПУБЛИКА ИРАК

Publication reference: ДВ бр. 97 от 1982 г.

Entry into force: 03.08.1983

English title: Consular Convention between People's Republic of Bulgaria and Republic of Iraq

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

24.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И РЕПУБЛИКА ИТАЛИЯ

Publication reference: ДВ бр. 67 от 1968 г.

Entry into force: 28.06.1974

English title: Consular Convention between People's Republic of Bulgaria and Republic of Italy

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

25.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И РЕПУБЛИКА КИПЪР

Publication reference: ДВ бр. 36 от 1986 г.

Entry into force: 25.10.1986

English title: Consular Convention between People's Republic of Bulgaria and Republic of Cyprus

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

26.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И РЕПУБЛИКА КУБА

Publication reference: ДВ бр. 40 от 1972 г.

Entry into force: 11.05.1979

English title: Consular Convention between People's Republic of Bulgaria and Republic of Cuba

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

27.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И РЕПУБЛИКА КУБА

Publication reference: ДВ бр. 57 от 1979 г.

Entry into force: 11.05.1979

English title: Consular Convention between People's Republic of Bulgaria and Republic of Cuba

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

28.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И РЕПУБЛИКА НИКАРАГУА

Publication reference: ДВ бр. 9 от 1983 г.

Entry into force: 12.06.1983

English title: Consular Convention between People's Republic of Bulgaria and Republic of Nicaragua

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

29.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И СИРИЙСКА АРАБСКА РЕПУБЛИКА

Publication reference: ДВ бр. 11 от 1982 г.

Entry into force: 27.05.1982

English title: Consular Convention between People's Republic of Bulgaria and Syrian Arab Republic

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

30.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И СОЦИАЛИСТИЧЕСКА ЕТИОПИЯ

Publication reference: ДВ бр. 6 от 1981 г.

Entry into force: 10.08.1981

English title: Consular Convention between People's Republic of Bulgaria and Socialist Ethiopia

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

31.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И СОЦИАЛИСТИЧЕСКА НАРОДНА ЛИБИЙСКА АРАБСКА ДЖАМАХИРИЯ

Publication reference: ДВ бр. 93 от 1982 г.

Entry into force: 20.02.1983

English title: Consular Convention between People's Republic of Bulgaria and Socialist People's Libyan Arab Jamahiriya

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

32.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И СОЦИАЛИСТИЧЕСКА РЕПУБЛИКА ВЬЕТНАМ

Publication reference: ДВ бр. 13 от 1980 г.

Entry into force: 22.06.1980

English title: Consular Convention between People's Republic of Bulgaria and Socialist Republic of Vietnam

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

33.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И СОЦИАЛИСТИЧЕСКА РЕПУБЛИКА РУМЪНИЯ

Publication reference: ДВ бр. 84 от 1973 г.

Entry into force: 08.08.1973

English title: Consular Convention between People's Republic of Bulgaria and Socialist Republic of Romania

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

34.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И СЪЕДИНЕНИТЕ АМЕРИКАНСКИ ЩАТИ

Publication reference: ДВ бр. 53 от 1974 г.

Entry into force: 28.05.1975

English title: Consular Convention between People's Republic of Bulgaria and United States of America

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

35.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И СЪЕДИНЕНИТЕ МЕКСИКАНСКИ ЩАТИ

Publication reference: ДВ бр. 95 от 1985 г.

Entry into force: 06.06.1986

English title: Consular Convention between People's Republic of Bulgaria and United Mexican States

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

36.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И СЪЮЗА НА СЪВЕТСКИТЕ СОЦИАЛИСТИЧЕСКИ РЕПУБЛИКИ

Publication reference: ДВ бр. 50 от 1971 г.

Entry into force: 25.11.1971

English title: Consular Convention between People's Republic of Bulgaria and the Union of Soviet Socialist Republics

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

37.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И ТУНИСКАТА РЕПУБЛИКА

Publication reference: ДВ бр. 98 от 1975 г.

Entry into force: 31.08.1976

English title: Consular Convention between People's Republic of Bulgaria and Republic of Tunisia

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

38.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И УНГАРСКАТА НАРОДНА РЕПУБЛИКА

Publication reference: ДВ бр. 49 от 1972 г.

Entry into force: 19.06.1972

English title: Consular Convention between People's Republic of Bulgaria and People's Republic of Hungary

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

39.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И ФЕДЕРАТИВНА НАРОДНА РЕПУБЛИКА ЮГОСЛАВИЯ

Publication reference: ДВ бр. 41 от 1963 г.

Entry into force: 09.03.1964

English title: Consular Convention between People's Republic of Bulgaria and Socialist Federal Republic of Yugoslavia

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

40.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И ФРЕНСКАТА РЕПУБЛИКА

Publication reference: ДВ бр. 50 от 1970 г.

Entry into force: 01.04.1970

English title: Consular Convention between People's Republic of Bulgaria and the French Republic

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

41.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ НАРОДНА РЕПУБЛИКА БЪЛГАРИЯ И ЧЕХОСЛОВАШКАТА СОЦИАЛИСТИЧЕСКА РЕПУБЛИКА

Publication reference: ДВ бр. 28 от 1974 г.

Entry into force: Entry into force: 23.03.1974

English title: Consular Convention between People's Republic of Bulgaria and Czechoslovak Socialist Republic

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

42.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ РЕПУБЛИКА БЪЛГАРИЯ И ГРУЗИЯ

Publication reference: ДВ бр. 143 от 1998 г.

Entry into force: 15.01.1998

English title: Consular Convention between Republic of Bulgaria and Republic of Georgia

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

43.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ РЕПУБЛИКА БЪЛГАРИЯ И РЕПУБЛИКА АРМЕНИЯ

Publication reference: ДВ бр. 16 от 2006 г.

Entry into force: 21.04.2006

English title: Consular Convention between Republic of Bulgaria and Republic of Armenia

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

44.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ РЕПУБЛИКА БЪЛГАРИЯ И РЕПУБЛИКА МАКЕДОНИЯ

Publication reference: ДВ бр. 26 от 2000 г.

Entry into force: 22.03.1999

English title: Consular Convention between Republic of Bulgaria and Republic of Macedonia

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

45.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ РЕПУБЛИКА БЪЛГАРИЯ И РЕПУБЛИКА МОЛДОВА

Publication reference: ДВ бр. 124 от 1998 г.

Entry into force: 17.05.1996

English title: Consular Convention between Republic of Bulgaria and Republic of Moldova

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

46.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ РЕПУБЛИКА БЪЛГАРИЯ И РЕПУБЛИКА УЗБЕКИСТАН

Publication reference: ДВ бр. 17 от 2005 г.

Entry into force: 04.05.2005

English title: Consular Convention between Republic of Bulgaria and Republic of Uzbekistan

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

47.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ РЕПУБЛИКА БЪЛГАРИЯ И РУСКАТА ФЕДЕРАЦИЯ

Publication reference: ДВ бр. 65 от 1999 г.

Entry into force: 07.10.1995

English title: Consular Convention between Republic of Bulgaria and Russian Federation

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

48.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ РЕПУБЛИКА БЪЛГАРИЯ И УКРАЙНА

Publication reference: ДВ бр. 36 от 1999 г.

Entry into force: 24.08.1996

English title: Consular Convention between Republic of Bulgaria and Republic of Ukraine

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

49.

Title: КОНСУЛСКА КОНВЕНЦИЯ МЕЖДУ РЕПУБЛИКА БЪЛГАРИЯ И РЕПУБЛИКА ТУРЦИЯ

Publication reference: Указ № 2013 от 10.12.1973 г. на Президиума на Народното събрание

Entry into force: 30.09.1973

English title: Consular Convention between Republic of Bulgaria and Republic of Turkey

Short summary: Very detailed regulatory framework similar to Vienna Consular Convention

[National legislation](#)

50.

Title: ЗАКОН ЗА ДИПЛОМАТИЧЕСКАТА СЛУЖБА

Publication reference: Обн. ДВ. бр. 78 от 2007, последни изменения ДВ 42 от 2009

Entry into force: 02.10.2007

English title: Diplomatic Service Act

Short summary: Regulates mainly the structure and organisations of the missions and career development of officials, contains few substantive provisions on consular services

51.

Title: УСТРОЙСТВЕН ПРАВИЛНИК НА МИНИСТЕРСТВОТО НА ВЪНШНИТЕ РАБОТИ

Publication reference: Приет с ПМС № 340 от 30.12.2009 г. Обн. ДВ. бр. 4 от 15 Януари 2010г.

Entry into force: 19.01.2010

English title: Regulation for the Structure of the Ministry of Foreign Affairs

Short summary: Regulatory framework of the structures within the Ministry of foreign affairs and of its functions

52.

Title: НАРЕДБА ЗА УСЛОВИЯТА И РЕДА ЗА ИЗДАВАНЕ НА ВИЗИ И ОПРЕДЕЛЯНЕ НА ВИЗОВИЯ РЕЖИМ (НУРИВ)

Publication reference: Приета с ПМС № 82 от 22.04.2008 г. Обн. ДВ. бр.44 от 9 Май 2008 г.

Entry into force: 10.07.2008

English title: Ordinance on the Conditions and Procedure for Issuance of Visas

Short summary: Regulatory framework concerning the issuance of visas

53.

Title: ЗАКОН ЗА БЪЛГАРИТЕ, ЖИВЕЕЩИ ИЗВЪН РЕПУБЛИКА БЪЛГАРИЯ

Publication reference: ДВ бр. 30 от 2000 г.

Entry into force: 15.04.2000

English title: Bulgarians Living Abroad Act

Short summary: Concerns mainly the communication and cultural support with the Bulgarian expats

54.

Title: НАРЕДБА ОТНОСНО РЕДА ЗА НАЗНАЧАВАНЕ И ПРИЕМАНЕ НА ПОЧЕТНИ (НЕЩАТНИ) КОНСУЛСКИ ДЛЪЖНОСТНИ ЛИЦА

Publication reference: Обн. ДВ. бр.114 от 30 Декември 2003 г.

Entry into force: 03.01.2004

English title: Regulation on the Assignment and Acceptance of Honorary (unpaid) Consular Officials

Short summary: Establishes the framework for appointment and functioning of honorary consuls

55.

Title: ЗАКОН ЗА БЪЛГАРСКИТЕ ЛИЧНИ ДОКУМЕНТИ

Publication reference: ДВ бр. 93 от 1998 г., посл. изм. ДВ, бр. 26 от 2010 г.

Entry into force: 01.04.1999

English title: Bulgarian Identity Documents Act

Short summary: Regulates the application for and issuance of personal documents, including ETDs

56.

Title: ПРАВИЛНИК ЗА ИЗДАВАНЕ НА БЪЛГАРСКИ ЛИЧНИ ДОКУМЕНТИ

Publication reference: ДВ бр. 12 от 2010 г.

Entry into force: 16.02.2010

English title: Regulation on the Issuance of Bulgarian Identity Documents

Short summary: Detailed regulation of the process of application for and issuance of personal documents, including the issuance of ETDs to European citizens

57.

Title: ПРАВИЛНИК ЗА ЛЕГАЛИЗАЦИИТЕ, ЗАВЕРКИТЕ И ПРЕВОДИТЕ НА ДОКУМЕНТИ И ДРУГИ КНИЖА

Publication reference: ДВ бр. 73 от 1958 г., посл. изм. 103/1990

Entry into force: 01.09.1958

English title: Regulation on Legalisations, Verifications and Translations of Documents

Short summary: Detailed regulation of the process of legalisation, verification and certified translation of various documents

58.

Title: ЗАКОН ЗА БЪЛГАРСКОТО ГРАЖДАНСТВО

Publication reference: ДВ бр. 136 от 1998 г., посл. изм. ДВ, бр. 33 от 2010 г.

Entry into force: 20.02.1999

English title: Bulgarian Citizenship Act

Short summary: Regulates the application for and issuance of personal documents, including ETDs
59.

Title: ЗАКОН ЗА ГРАЖДАНСКАТА РЕГИСТРАЦИЯ

Publication reference: ДВ бр. 67 от 1999 г., посл. изм. ДВ, бр. 30 от 2010 г.

Entry into force: 31.07.1999

English title: Civil Status Registration Act

Short summary: Regulates the issuance of acts and registrations of changes in the civil status of citizens and the related services of public authorities
60.

Title: ЗАКОН ЗА ЧУЖДЕНЦИТЕ В РЕПУБЛИКА БЪЛГАРИЯ

Publication reference: ДВ бр. 153 от 1998 г., посл. изм. ДВ, бр. 103 от 2009 г.

Entry into force: 05.07.1999

English title: Foreigners in Bulgaria Act

Short summary: Regulates the issuance of visas and various identity documents by consular and internal authorities
61.

Title: ПРАВИЛНИК ЗА ПРИЛАГАНЕТО НА ЗАКОНА ЗА ЧУЖДЕНЦИТЕ В РЕПУБЛИКА БЪЛГАРИЯ

Publication reference: ДВ бр. 43 от 2000 г., посл. изм. ДВ, бр. 44 от 2008 г.

Entry into force: 05.07.1999

English title: Regulation on the application of the Foreigners in Bulgaria Act

Short summary: Regulates the issuance of visas and various identity documents by consular and internal authorities to foreigners and family members
62.

Title: ЗАКОН ЗА ВЛИЗАНЕТО, ПРЕБИВАВАНЕТО И НАПУСКАНЕТО НА РЕПУБЛИКА БЪЛГАРИЯ НА ГРАЖДАНЕТЕ НА ЕВРОПЕЙСКИЯ СЪЮЗ И ЧЛЕНОВЕТЕ НА ТЕХНИТЕ СЕМЕЙСТВА

Publication reference: ДВ бр. 80 от 2006 г., посл. изм. ДВ, бр. 102 от 2009 г.

Entry into force: 01.01.2007

English title: EU Citizens and Families Entry, Stay and Departure in the Republic of Bulgaria Act
63.

Title: ТАРИФА № 3 ЗА ТАКСИТЕ, КОИТО СЕ СЪБИРАТ ЗА КОНСУЛСКО ОБСЛУЖВАНЕ В СИСТЕМАТА НА МИНИСТЕРСТВОТО НА ВЪНШНИТЕ РАБОТИ ПО ЗАКОНА ЗА ДЪРЖАВНИТЕ ТАКСИ

Publication reference: ДВ бр. 03 от 2008 г., посл. изм. ДВ, бр. 18 от 2010 г.

Entry into force: 11.01.2008

English title: Tariff 3 on Consular Fees

Short summary: Determines the fees for consular services, and the exemptions in cases of issuance of ETDs to victims of crimes
Websites

64.

Title: Министерство на външните работи на Република България

Publication reference: <http://www.mfa.bg>

English title: Ministry of Foreign Affairs of Republic of Bulgaria



Cyprus - Κύπρος (CY)

1. Introduction

This Report contains the legal framework and national practice of the Member State Cyprus on consular and diplomatic protection as of 30 September 2009.

Cyprus can be considered as a Member State where sufficient information can be found on the legal framework and practice on consular and diplomatic protection.

The basis of the report is: the database of the Cyprus legal portal¹, the website of the Ministry of Foreign Affairs of the Republic of Cyprus² and interviews with officials from this Ministry and related internal documents.

1.1. Terminology - National acronyms and definitions

MFA (Ministry of Foreign Affairs)

CMU (Crisis Management Unit)

COG (Official Gazette of the Republic of Cyprus)

2. Legal framework

The Cyprus legal framework consists of obligations under multilateral treaties, bilateral treaties, obligations under European treaties, informal arrangements and State policy and practice.

So far, no basic right to consular or diplomatic protection has been established.

2.1. International law

The Republic of Cyprus is/is not a Party to the following multilateral conventions:

- Vienna Convention on Consular Relations: party by accession on 14 April 1976 (Law No. 7/1976, published in Official Gazette No. 1258/27.02.1976). No reservations have been made.
 - Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes: no party.
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80): party since its ratification on 27 June 1975 (Law No. 33/1975, published in Official Gazette No. 1199/27.06.1975). No reservations have been made.

Cyprus is not a Party to other multilateral international treaties on consular protection.

Cyprus is a party to consular conventions with 14 states: 11 EU Member States (Bulgaria, Czech Republic, France, Germany, Greece, Hungary, Italy, Poland, Romania, Slovakia and Sweden), Norway, Mexico and the United States (see list of important treaties in [Section 8](#)). These bilateral conventions include provisions on consular assistance. The conventions with Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia have been concluded by the Republic of Cyprus. The remaining

¹ www.leginetcy.com

² www.mfa.gov.cy

conventions had been concluded by the United Kingdom and are binding upon the Republic of Cyprus by virtue of State succession.

There is no formal or informal agreement specifically on consular and diplomatic assistance. There is only an Agreement between the Republic of Cyprus and Greece for the Representation of the Republic of Cyprus in Saudi Arabia, in connection with the issuance of visas for Cyprus. The implementation of this agreement is not yet in practice; some details are still under discussion.

Of relevance is also Cyprus membership in the Commonwealth. In the 1960s and 1970s the Commonwealth relationship provided to its members a framework for the performance of consular functions on the basis of reciprocity; this practice is diminishing nowadays.

2.2. Transposition of international law into national law

In Cyprus, treaties are binding and enter into force upon ratification by law (Article 169 of the Constitution of the Republic of Cyprus). The Supreme Court has held in *Wilesinge v. Police* (Judgment of 5 November 2004) that individual rights may still derive from treaties that are not incorporated by statute and are not transformed in domestic law, provided that they have given rise to legitimate expectations.

2.3. Implementation of European law into national law

Art 23 TFEU and Decision 95/553/EC are directly effective. A 2006 amendment to the 1960 Cyprus Constitution provide for the direct effect and supremacy of European law. However, both Decision 95/553/EC and Decision 96/409/CSFP have been incorporated by executive acts of the MFA and not by legislative acts through the House of Representatives; as a result they have not been published in the Official Gazette.

2.4. National law

So far, a national consular law or law on diplomatic protection does not exist other than the law implementing the Vienna Convention on Diplomatic Relations (Law No. 40/1968) and the Vienna Convention on Consular Relations (Law No. 7/1976).

For consuls and diplomats, there are no specific internal guidelines on diplomatic or consular protection of EU citizens other than the guidelines on the application of Decision 95/553/EC which have taken the form of general instructions issued and made public via the website of the MFA. They basically reproduce the provisions of the Decision and are addressed to EU citizens.

As to **remedies** against a refusal to provide consular protection, there is an internal appeal process through filing a complaint to the MFA and the possibility of petitioning the “Commissioner for Administration-Ombudsman”. The decisions of the Ombudsman are not legally binding, while the MFA is not in any way clarifying whether its actions relating to consular protection are judicially reviewable. The jurisprudence of the Supreme Court has not so far examined the issue as no such case has arisen.

2.5. Documentation of consular protection

Cyprus practice in international law is not compiled either officially or unofficially. Any information on Cyprus foreign policy, including on consular relations and affairs, can be retrieved from the website of the Cyprus Ministry of Foreign Affairs.

2.6. Information to citizens on consular protection

The guidelines on the application of Decision 95/553/EC have taken the form of general instructions and have been made public via the website of the MFA. They basically reproduce the provisions of the Decision and are addressed to EU citizens.

They can be summarized as follows:

In countries where Cyprus does not have a Diplomatic or Consular representation, you can request European consular assistance and apply for help from an Embassy or Consulate (not an Honorary Consulate) of another EU Member State. To benefit from such assistance, you must be a national of one of the EU Member States, be in distress abroad, in a country which is not part of the EU, and there must be no accessible Cypriot Embassy or Consulate. The consular assistance provided is limited only to genuine emergencies: death, accidents involving serious injury or serious illness, arrest or detention, repatriation on medical grounds, or issuance of a temporary travel document (if your passport is being lost or stolen).

There is also the [leaflet delivered by the Council of the European Union](#) which gives the same information and guidance.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

The above bilateral consular conventions do not include provisions protecting Union citizens working and living in third countries. This is all the more so, since none of them has been concluded after 2004 when Cyprus joined the EU.

Cyprus has not informed third countries of the practice of extending protection to Union citizens (Art 8 Vienna Convention on Consular Protection).

Cyprus bilateral agreements with third countries do not include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

Cyprus extends consular protection to family members, i.e., the spouse and children up to 18 years old of the Cypriot national, only exceptionally and under specific circumstances, such as in case of emergency evacuation.

Cyprus has not started negotiations concerning agreements with third countries including provisions protecting Union citizens working and living in third countries.

Cyprus has not started negotiations concerning agreements with third countries to include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

3.2. Statistical data on consular practice

There are no official statistical data regarding consular protection to either Cypriot or EU nationals.

There is no compilation of relevant practice. **Guidelines are given to both the staff of the Ministry and the general public via the MFA's website.**

There is no relevant case law on the rules concerning consular protection.

The most common problem encountered by Cypriot citizens traveling in third countries is the loss of passports. The most common consular problem encountered by

Cypriot citizens working and living abroad is – albeit not often – their payment according to their contracts and the extension or renewal of their visa, when this is needed.

4. Consular protection in detail

The legal basis for consular services is the Law No. 7/1976 which is the domestic implementing legislation that has given effect to the Vienna Convention on Consular Relations.

After independence in 1960, the Republic of Cyprus established career Consulates General in locations where nationals were resident in some numbers and where there was need for supporting the merchant shipping fleet in port cities of frequent calls or other interests. With the same reasoning Honorary Consuls were also established and there is representation in at least 133 States either in the form of Permanent Diplomatic Missions, Honorary Consuls and mainly Missions accredited in numerous countries. Cyprus is represented abroad by more than 40 diplomatic missions (Embassies and Consulates-General), which provide a range of services to Cypriot citizens abroad. Embassies are located in the capitals of the host countries and their jurisdiction many times extends to other, neighbouring countries, where Cyprus does not have an Embassy. In countries where there is not a diplomatic mission of the Republic of Cyprus, consular assistance may be received at the nearest Cypriot mission, or at any diplomatic or consular missions of other EU Member States.

There is only an Agreement between the Republic of Cyprus and Greece for the Representation of the Republic of Cyprus in Saudi Arabia, in connection with the issuance of visas for Cyprus. The implementation of this agreement is not yet in practice; some details are still under discussion.

4.1. *Right to consular (and diplomatic) protection*

In Cyprus, no right to consular (and diplomatic) protection exists. Consular (and diplomatic) protection is provided only for Cypriot and EU-nationals, based on administrative practice.

In general, **consular protection is not extended to family members who are not nationals of a Member State, except in cases of emergency evacuation.**

There are no specific provisions regarding non-nationals, long term residents or recognized refugees apart from those cases where there is a legal connection with a Cypriot citizen. The basic link is citizenship. In the absence of such link there is no obligation on the State, **but as a matter of policy if the applicant is legally residing in a Union State or has the recognized status of a refugee, then he/she will receive the same treatment and protection as a Cypriot/Union citizen.**

In general, **Cypriot citizens finding themselves in emergency while abroad are advised to first contact their family and/or acquaintances back home**, since they may be able to resolve any problem for them, or help them to do so, without any further assistance. If necessary, they are then advised to contact the nearest Cyprus Mission (if there is no resident Cypriot Mission, they are advised to seek emergency assistance from a Mission of another EU Member State), and/or the Consular Department of the Ministry of Foreign Affairs in Nicosia.

4.2. Assistance in cases of death

Cypriot diplomatic or consular missions **inform** the national authorities in Cyprus which contact the next-of-kin.

Cypriot diplomatic or consular missions – with the consent of the next-of-kin – assist in obtaining a death certificate and in arranging for the body to be buried or repatriated to the home country.

Next-of-kin is required to put a **deposit** for covering the costs of repatriation or funeral etc.

4.3. Assistance in cases of serious accident or serious illness

Cypriots travelling abroad are strongly urged to make any necessary insurance arrangements before their trip. They are warned that their insurance company will have the responsibility to solve any issues related to payment of medical treatment received abroad, as well as take the necessary steps for medical evacuation, if needed.

Cypriots who travel abroad and suffer an accident are advised to contact the local police office and the Cyprus mission there. If there is no Cyprus mission, they are advised to contact the Consular Department of the Ministry of Foreign Affairs in Nicosia.

Upon the request and with the consent of Cypriots who have suffered an accident abroad, diplomatic or consular missions will then inform the Cyprus Ministry of Foreign Affairs in Nicosia, which through the Cyprus police will then inform and maintain contact with the next-of-kin, arrange visits and provide information on the medical services available locally (e.g., list of local doctors and hospitals).

4.4. Assistance in cases of arrest or detention

Cyprus diplomatic or consular missions are informed in cases of arrest, detention or imprisonment of Cypriot citizens while abroad upon a request by the citizen or upon notification of the receiving State. The Mission, within the limits of its competences and subject to the Laws and Regulations of the country in which someone is arrested, detained or imprisoned, can lend **assistance mainly at humanitarian level**.

The following list is indicative of the services which Cyprus Missions can provide on request, and with the applicant's consent (the range of services of course varies, depending on the situation and on the country of arrest/detention):

- following a written request, ask the local authorities for information on the case, inquire about the person's fate and ask them to deal with the case within a reasonable time;
- always with the consent of the citizen, inform the family or acquaintances about the detention (and, if applicable, the penalty of imprisonment) and facilitate correspondence with them;
- arrange visits as soon as possible and maintain regular contact with the citizen (according to the local practice), if the citizen so wishes;
- ensure that the treatment offered (e.g., conditions of detention, including medical and dental care, and food, judicial inquiries and court appearance) does not fall below the minimum accepted international standards, that it complies with human rights law and that it is not inferior to the treatment accorded to the nationals of the country where the Cypriot citizen has been arrested/detained. In case that this is not respected, then the Mission will take action with the local authorities;

- furnish the citizen with a list of local lawyers who are specialised in certain fields or who have previously defended Cypriots;
- ensure that the arrested/detained understand her/his rights under local law and furnish them with information on the legal system of the country, how to apply for legal representation or for legal aid, the conditions for bail, etc.;
- organise (at the citizen's expense and within what is permitted) the purchase of food, medicine, clothes and other necessities, to compensate for poor prison conditions (the Mission acts only as a financial intermediary - it does not grant financial aid, thus the citizen must obtain the necessary funds from her/his own resources, or from their family and acquaintances);
- receive and deliver messages and correspondence, and provide reading material (in so far as this is allowed) and transmit messages if telephone cannot be used;
- facilitate the transfer of funds from family or acquaintances for the citizen's subsistence and in particular in cases of bail or fines to be paid;
- make inquiries and obtain information on missing personal effects since the moment of the arrest;
- provide assistance, if the citizen so wishes, to request a transfer to Cyprus under an Agreement on the Transfer of Persons Sentenced to Imprisonment (if such an Agreement between Cyprus and the receiving country exists, and according to its relevant requirements).

Of relevance is an incident concerning Mr Harris Nicolaides, a holder of Cypriot and Australian nationalities, who was convicted and imprisoned in Thailand in January 2009 for insulting the monarchy in a book that reportedly sold seven copies. The Cypriot government intervened for his release but through the channel of the Cypriot High Commission in New Delhi (accredited in Thailand) and the Honorary Consulate in Bangkok. There is no official statement or other indication that would verify whether there was petition to other Member States on behalf of the imprisoned individual.

4.5. Assistance to victims of violent crime

There is no specific provision on assistance to victims of violent crime, but this should normally fall within the 'emergency cases'.

Cyprus diplomatic or consular missions **inform** about medical assistance and legal advice.

Financial support is granted only in exceptional circumstances and only after the Cypriot citizen or her/his family or acquaintances sign **a relevant form (Assumption of Responsibility) agreeing to repay these funds** to the Government of the Republic of Cyprus.

4.6. Relief and repatriation of distressed citizens

In case of crisis, the Cyprus Ministry of Foreign Affairs activates a **Crisis Management Unit (CMU)**, headed by the Director of Consular Affairs or, if the crisis is of a bigger scale, by the Permanent Secretary of the Ministry. The CMU is responsible for assessing the crisis and coordinate any relief and/or repatriation of distressed citizens. Such types of crisis include: 1) terrorist attacks, 2) political upheavals or armed conflicts, 3) natural disasters, 4) epidemics and 5) accidents.

Action undertaken includes repatriation of citizens or their location and exclusion from possible casualty lists etc. In preparing such lists of citizens in the areas of crisis,

the Ministry relies on information gathered by 1) travel agencies, 2) embassy lists, 3) families of affected citizens both locally and in Cyprus and 4) foreign or EU countries. In most cases, the MFA having established the list of casualties (usually no Cypriots affected) ends its task there and the CMU that was set up steps down.

But when repatriation is required, usually the MFA repatriates using Cyprus Airways special flights or requests the assistance of other countries repatriating citizens, preferably EU partners.

4.6.1. Natural disasters

During the 2004 tsunami natural disaster, the few Cypriots that were in the affected countries and who were mainly tourists in Thailand, were immediately and successfully evacuated. The cooperation between Cyprus and other Member States, in this case, was considered by the MFA to be satisfactory.

4.6.2. Terrorist acts

There have been no Cypriot victims in any of the major terrorist attacks that have taken place in the recent past.

4.6.3. Pandemics

The general procedure described above is applicable. No Cypriot victims have been reported.

4.6.4. Military conflicts

In the case of armed conflicts, voluntary repatriations or evacuations from the conflict zone are undertaken, usually involving only the MFA and the local authorities in the area, together with other EU partner Crisis Management Units which might be offering transportation means. The lists of citizens in such cases were drawn up primarily from inputs by the Travel agencies and Cypriot relatives, in Cyprus.

Lebanon conflict - July/August 2006:

During the Lebanon conflict of summer 2006, the Republic of Cyprus took a leading role as a reception point and undertook voluntarily the repatriation of many EU nationals. The Crisis Management Unit of the MFA was supported by a broad range of other Governmental Ministries or Institutions such as the Police, the Army, the Ministry of Health and the Civil Defense and was successful in offering assistance to almost 60.000 EU and third country nationals who arrived in Cyprus. **The Republic of Cyprus covered all relevant expenses, thus not engaging in ‘pooling of resources and burden-sharing arrangements’.**

Chad conflict - February 2008:

As regards the evacuation of EU citizens by France from Chad in February 2008 and the concept of “lead State”, the MFA had no experience and did not participate in the relevant operations at that instance.

4.6.5. Accidents

In case of large-scale accidents involving Cypriot travellers (like the Helios air disaster or the bus accident in Egypt), special flights were used to repatriate the remains or to shuttle relatives to the scene of the crash, on the expenses of the Government.

4.7. Financial advances

Financial advances and repatriation to the home country has been provided in the past and will be provided in the future in exceptional cases.

Financial advances to EU citizens: So far, a standard practice has not been established. In general, the same rules (applying for Cypriots) will apply for the EU nationals. Thus, **any unrepresented EU national who needs financial advance has to contact his/her friends or acquaintances in Cyprus and ask them to deposit the necessary amount of money with the Accounts Department of the MFA in Nicosia. His/her Embassy in Nicosia may also deposit the money.** If there is an Embassy of Cyprus in the country of origin his/her friends or government may deposit the necessary amount of money to the Cyprus Embassy. The issue may arise whether the deposit on behalf of the claimant has to come before the financial assistance to the claimant. This point has still to be clarified due also to lack of experience in dealing with such matters, but the Cyprus MFA approaches the matter in a constructive manner.

5. Emergency travel document (ETD)

All Cyprus diplomatic missions and general consulates are equipped with ETDs.

Due to their small number, Cypriot diplomatic missions are accredited to many other countries where there are only Honorary Consulates; thus, an Embassy accredited to a specific country is also responsible for the Cyprus Honorary Consulate in that country. **Honorary Consulates in need of issuing an ETD will contact the Embassy under whose supervision they operate and ask for the document.** The Embassy will check the request of the Honorary Consulate and send the requested document. The emergency travel document will then be filled out and issued by the Honorary Consul.

No problems have been reported.

6. Relevant diplomatic protection

In Cyprus, no right to consular (and diplomatic) protection exists. Consular (and diplomatic) protection is provided only for Cypriot and EU-nationals, based on administrative practice. In general, consular (and diplomatic) protection is not extended to family members who are not nationals of a Member State.

7. Summary

Cyprus is a party to the most important international treaties on consular relations and has concluded more than a dozen bilateral consular agreements that include provisions on consular protection.

Assistance to EU citizens is provided according to Article 23 TFEU. So far, practice is only limited and mostly unreported. **Due to the small number of Cyprus diplomatic and consular missions, the issue is much more likely to arise as regards Cypriots finding themselves in countries with no Cyprus diplomatic mission than with EU nationals resorting to Cyprus missions for consular protection.**

For evacuation actions in international conflicts and other crises, the ad hoc co-operation between EU Member States has proven to be very helpful.

The legal framework has not been extended by bilateral arrangements to cover the delegation of consular or diplomatic protection according to Article 23 TFEU or support for family members not nationals of a Member State.

8. List of important documents

International treaties and related national instruments

1.

Title: Ο περί της Συμβάσεως της Βιέννης περί Προξενικών Σχέσεων (Κυρωτικός) Νόμος του 1976

Publication reference: Law No. 7/76 COG No. 1258 of 27 February 1975

Entry into force: 27.02.1976

English title: Vienna Convention on Consular Relations, Vienna, 24 April 1963

2.

Title: Ο περί της Συμφωνίας περί Μεταφοράς Νεκρών (Κυρωτικός) Νόμος του 1975

Publication reference: Law No. 33/75 COG No. 1199 of 27 June 1975

Entry into force: 27.06.1975

English title: Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973

3.

Title: Ο περί Προξενικής Συμβάσεως του 1981 μεταξύ της Κυβερνήσεως της Κυπριακής Δημοκρατίας και του Κρατικού Συμβουλίου της Λαϊκής Δημοκρατίας της Βουλγαρίας (Κυρωτικός) Νόμος του 1982

Publication reference: Law No. 19/82 COG No. 1771 of 15 April 1982

Entry into force: 24.10.1986

English title: Consular Convention between the Republic of Cyprus and the People's Republic of Bulgaria, Nicosia, 24 March 1981

4.

Title: Ο περί Προξενικής Συμβάσεως του 1976 μεταξύ της Κυβερνήσεως της Κυπριακής Δημοκρατίας και της Κυβερνήσεως της Σοσιαλιστικής Δημοκρατίας της Τσεχοσλοβακίας (Κυρωτικός) Νόμος του 1977

Publication reference: Law No. 65/77 COG No. 1399 of 11 November 1977

Entry into force: 27.07.1978 (Remains in force between Cyprus and the Czech Republic in accordance with the Exchange of Letters of 19 January 1999)

English title: Consular Convention between the Republic of Cyprus and the Czechoslovak Socialist Republic, Prague, 12 May 1976

5.

Title: Ο περί Προξενικής Συμβάσεως του 1976 μεταξύ της Κυβερνήσεως της Κυπριακής Δημοκρατίας και της Κυβερνήσεως της Σοσιαλιστικής Δημοκρατίας της Τσεχοσλοβακίας (Κυρωτικός) Νόμος του 1977

Publication reference: Law No. 65/77 COG No. 1399 of 11 November 1977

Entry into force: 27.07.1978 (Remains in force between Cyprus and Slovakia in accordance with the Exchange of Letters of 10 December 1999 and 10 January 2000)

English title: Consular Convention between the Republic of Cyprus and the Czechoslovak Socialist Republic, Prague, 12 May 1976

6.

Title: Ο περί Προξενικής Συμβάσεως του 1978 μεταξύ της Κυβερνήσεως της Κυπριακής Δημοκρατίας και της Κυβερνήσεως της Ενώσεως Σοβιετικών Σοσιαλιστικών Δημοκρατιών (Κυρωτικός) Νόμος του 1978

Publication reference: Law No. 49/78 COG No. 1476 of 13 October 1978

Entry into force: 13.10.1978 (Remains in force until the conclusion of a new agreement)

English title: Consular Convention between the Republic of Cyprus and the Union of Soviet Socialist Republics, Nicosia, 8 February 1978

7.

Title: Ο περί Προξενικής Συμβάσεως του 1980 μεταξύ της Κυβερνήσεως της Κυπριακής Δημοκρατίας και της Κυβερνήσεως της Λαϊκής Δημοκρατίας της Πολωνίας (Κυρωτικός) Νόμος του 1983

Publication reference: Law No. 9/83 COG No. 1847 of 11 March 1983

Entry into force: 18.08.1984

English title: Consular Convention between the Government of the Republic of Cyprus and the Government of the Polish People's Republic, Nicosia, 3 July 1980

8.

Title: Ο περί Προξενικής Συμβάσεως του 1989 μεταξύ της Κυβέρνησης της Κυπριακής Δημοκρατίας και της Ουγγρικής Λαϊκής Δημοκρατίας (Κυρωτικός) Νόμος του 1993

Publication reference: Law No. 15(III)/83

Entry into force: 11.06.1994

English title: Consular Convention between the Republic of Cyprus and the Hungarian People's Republic, Budapest, 24 May 1989

9.

Title: Consular Convention between His Majesty in respect of the United Kingdom and the President of the French Republic, with 2 Protocols of Signature and 2 Exchanges of Notes. Paris, 31 December 1951

Publication reference: UNTS vol. 330, p. 145

Entry into force: 14 January 1954 (in force by State succession)

10.

Title: Consular Convention between Her Majesty in respect of the United Kingdom and the President of the Federal Republic of Germany, with 3 Protocols of Signature and 3 Exchanges of Notes. Bonn, 3 July 1956

Publication reference: UNTS vol. 330, p. 233

Entry into force: 28 December 1957 (in force by State succession)

11.

Title: Consular Convention between Her Majesty in respect of the United Kingdom and His Majesty the King of the Hellenes, with Agreed Minutes, 2 Protocols of Signatures and 2 Exchange of Notes. Athens, 17 April 1953

Publication reference: UNTS vol. 191, p. 151

Entry into force: 14 February 1954 (in force by State succession)

12.

Title: Consular Convention between Her Majesty in respect of the United Kingdom and the President of the Italian Republic, with 2 Protocols of Signature and 2 Exchange of Notes. Rome, 1 June 1954

Publication reference: UNTS vol. 330, p. 145

Entry into force: 29 December 1957 (in force by State succession)

13.

Title: Consular Convention between Her Majesty in respect of the United Kingdom and His Majesty the King of Sweden, with 3 Protocols of Signature and 2 Exchanges of Notes. Stockholm, 14 March 1952

Publication reference: UNTS vol. 202, p. 157

Entry into force: 24 September 1952 (in force by State succession)

14.

Title: Consular Convention between His Majesty in respect of the United Kingdom and His Majesty the King of Norway, with Agreed Minutes, 2 Protocols of Signature and Exchange of Notes. Oslo, 22 February 1951

Publication reference: UNTS vol. 326, p. 266

Entry into force: 30 August 1951 (applicable to Cyprus 18 May 1955) (in force by State succession)

15.

Title: Consular Convention between Her Majesty in respect of the United Kingdom and the President of the United Mexican States, with 2 Agreed Minutes, 2 Protocols of Signature and 2 Exchange of Notes. Mexico city, 20 March 1954

Publication reference: UNTS vol. 331, p. 21

Entry into force: 1 April 1955 (in force by State succession)

16.

Title: Consular Convention between His Majesty in respect of the United Kingdom and the President of the United States of America, with Protocol of Signature. Washington, 6 June 1951

Publication reference: UNTS vol. 165, p. 21

Entry into force: 7 September 1952 (in force by State succession)

Websites, reports

17.

Title: Υπουργείο Εξωτερικών της Κυπριακής Δημοκρατίας

Publication reference:

[http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/CECD9A2AE26186BCC225720C001E0B21/\\$file/ProxEN.pdf?OpenElement](http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/CECD9A2AE26186BCC225720C001E0B21/$file/ProxEN.pdf?OpenElement) (last visited: 30 September 2009)

English title: Ministry of Foreign Affairs

18.

Title: Υπουργείο Εξωτερικών της Κυπριακής Δημοκρατίας

Publication reference:

http://www.mfa.gov.cy/mfa/mfa2006.nsf/consular05_en/consular05_en?OpenDocument (last visited: 30 September 2009)

English title: Ministry of Foreign Affairs



Czech Republic - Česká republika (CZ)

1. Introduction

This Report describes the legal framework and the national practice of the Czech Republic on consular and diplomatic protection as of 1 January 2010.

The Czech Republic can be considered to be a Member State where only scattered information can be found on the legal framework on consular and diplomatic protection. Consular practice can only partly be ascertained by looking at published documents. Interviews with officials of the Ministry of Foreign affairs and access to internal documents are necessary to get an overview about consular practice.

The basis of the report:

- Unofficial privately managed, but widely used and generally acknowledged. legal information system *ASPI*¹;
- the website of the *Ministerstvo zahraničních věcí* (the Ministry for Foreign Affairs, from now on “the Ministry”)² of the *Vláda České republiky* (Government of the Czech Republic, from now on “the Government”);
- the website of the Council of Europe – Treaty Office
- the website of the United Nations Organisation – *Collection des Traités*
- Interviews with officials of the Ministry and internal documents obtained from them upon request were necessary for this Report.

To a great extent, relevant information about the legal framework and data about consular practice have already been summarized in the Czech response to a questionnaire sent to the EU countries’ Ministries of foreign affairs by the Commission of the European Union (from now on only “Questionnaire”).

1.1. Terminology – National acronyms and definitions

MZV – *Ministerstvo zahraničních věcí* (Ministry of Foreign Affairs)

Sb. – *Sbírka zákonů* (Collection of laws – in both Czechoslovakia and in the Czech Republic) for publication of both national law and international treaties.

Sb. m. s. – *Sbírka mezinárodních smluv* (Collection of international treaties) for publication of international treaties since 2001.

2. Legal framework

The Czech Republic’s legal framework consists of multilateral treaties, bilateral treaties, obligations under the Treaty on the Functioning of the European Union, secondary law of the European Union, informal arrangements, national legislation and guidelines and measures of the Ministry of Foreign Affairs.

¹ <http://www.aspi.cz>

² <http://www.mzv.cz>

So far, no legal right to consular or diplomatic protection has been established on both statutory and / or even constitutional basis.

2a. Legal consequences of the dissolution of Czechoslovakia

It shall be emphasized that the Czech Republic was established as an independent country on 1 January 1993 after the dissolution of Czechoslovakia.

Many Czech laws (statutes and other legal texts) have been adopted before the dissolution as Czechoslovakia.

Most multilateral and bilateral conventions, treaties and agreements related to consular protection have already been concluded by Czechoslovakia.

The Czech Republic succeeded to them due to principles of international law.

2.1. International law

Multilateral conventions related to consular protection

The Czech Republic **is a party** to the following multilateral conventions:

- *Videňská úmluva o diplomatických stycích* - Vienna Convention on Diplomatic Relations: Czechoslovakia has been a contracting party since 25 April 1964 (published for domestic official purposes in Czech language in *č. 157/1964 Sb.* as a decree of the Minister of foreign affairs of Czechoslovakia). The Czech Republic acceded to the Convention on 22 February 1993.
- *Videňská úmluva o konzulárních stycích* - Vienna Convention on Consular Relations: Czechoslovakia has been a contracting party since 12 April 1968 (in *č. 32/1969 Sb.*). The Czech Republic acceded to the Convention on 22 February 1993.

The Czech Republic **is not a party** to:

- the Optional Protocol on the Compulsory Settlement of Disputes to the Vienna Convention on Consular Relations.
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80):

The Czech Republic is not a party of other multilateral international treaties on consular protection.

Bilateral conventions related to consular protection

Czechoslovakia concluded, and the Czech Republic succeeded to numerous treaties on consular relations with European and other countries. 46 treaties are mentioned in the list of the ministry, 39 treaties were counted according to an internal study on consular law. The difference can be explained with different methods of counting of existing treaties due to succession after dissolution of Czechoslovakia and due to breakdown of other countries.

Many treaties have been concluded with countries which were at that time not a contracting party of the Vienna Convention on consular relations. The negotiation of such treaties formed a policy of socialist Czechoslovakia. Since 1990, there was no will to further develop this bilateral consular law. Therefore, the treaties have not been amended to reflect new trends, including these related to the membership of the Czech Republic in the European Union.

These treaties often contain provisions on consular protection. A quick look at them already shows that these provisions usually do not substantially alter standards of consular protection. They often only repeat provisions of the Vienna Convention.

Many bilateral consular treaties are effectively superseded by the Vienna Convention, remain without application, or can be perceived as obsolete.

An **international treaty on consular assistance exists only with the Czech Republic's close neighbour Slovakia**. *Ujednání mezi Ministerstvem zahraničních věcí České republiky a Ministerstvem zahraničních věcí Slovenské republiky o spolupráci v oblasti konzulárních služeb* ([Agreement between the Ministry of Foreign Affairs of the Czech Republic and the Ministry of Foreign Affairs on Cooperation in the Agenda of Consular Services](#)) was agreed on and has been applied since 4 February 1993, published in The Czech Republic in 120/2001 Sb. m. s. Provisions related to consular protection were subsequently clarified in the Agreement 75/2003 Sb. m. s.

This Agreement managed the dissolution of the Czechoslovak consular service and its pending cases in the year 1993. Assistance, however, continues.

It is based mainly on the fact that both languages, Czech and Slovak, are mutually intelligible in both spoken and written form.

Both countries have also been maintaining and developing special economic, social and political relations since their establishment after the dissolution of Czechoslovakia: customs union, free movement of persons, automatic or easy recognition of qualifications, certificates, swift recognition of judicial and administrative decisions without translation, coordination of social security, etc.

There are no similar agreements on consular and diplomatic assistance in favour of nationals of other parties with any other countries.

It is possible to discuss whether this agreement has effectively been superseded by Article 23 of the Treaty on the Functioning of the European Union and by measures adopted by the European Union for its implementation.

The agreement expects mutual assistance in case of emergency in general. Specific situations are not listed. For example, arrest and detention are not mentioned at all. It can thus be concluded that this bilateral agreement does not provide a higher level of protection. This agreement does contain provisions on the reimbursement of expenses between Czech and Slovak authorities.

The Czech Republic has also launched other forms of cooperation with other Member States of the European Union in its consular activities.

According to the Questionnaire, the Czech Republic pools resources with Hungary and Austria in Podgorica, Montenegro (Slovakia is not present in this new European independent country). There is no formal international treaty for this burden sharing, only adequate contractual framework.

Such practice is now planned also for other missions with Slovakia and Poland. The current economic recession and the resulting budget cuts cause this policy.

2.2. Transposition of International Law

International law is partially incorporated into domestic law, according to Article 10 of the *Ústava České republiky* (Constitution of the Czech Republic), as amended by Constitutional Law 395/2001 in 2001.

The scope of this incorporation is, however, limited to treaties which not only have been ratified by the president of the Czech Republic with the approval of the Parliament (Article 49 and Article 62 of the Constitution) but have also entered into force due to a successful ratification by other contracting States.

There usually exists a common opinion that these conditions are met if similar requirements were met by Czechoslovakia and its authorities.

Therefore, both key conventions – i.e., the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations – are generally perceived as enjoying direct effect and precedence over Czech law, if their rules are self-executing. This direct effect is necessary for ensuring diplomatic and consular privileges as well as immunities.

Only a certain part of the relevant legislation includes special provisions exempting diplomatic and consular missions and their officials from duties and restrictions. In many other cases, diplomatic and consular immunities and privileges are not mentioned in relevant legislation and shall instead be taken into consideration by all those who enforce this legislation.

2.3 Implementation of European law into national law

Article 23 of the Treaty on the Functioning of the European Union and Decision 95/553/EC related to this are perceived to be directly applicable and this direct application is expected to be required.

Web pages of the Czech Ministry of Foreign Affairs reveal that Czech citizens abroad have general knowledge about this method of protection of. The Ministry publishes a short summary about this protection, provides links to diplomatic and consular services of other Member States, and information about all legal texts and policy documents of the European Union.

Guidelines for the realization of this protection have not been published by the Ministry. The Ministry has issued **a set of standards for the protection of nationals of other Member States addressed to consuls and consular missions**: *Směrnice o konzulární ochraně občanů členských států Evropské unie* ([Guideline for consular protection of citizens of Member States of the European Union](#)), from now on “**European Citizens Guideline**”), čj. (no.) 300574/2004-KO/05 of 31 March 2004.

This set of standards expects equal treatment, resulting in protection similar to that of Czech citizens. The **set of standards for protection of Czech citizens in case of an emergency**, *Směrnice o poskytování pomoci občanům ČR, kteří se v zahraničí ocitli v nouzi* (Guideline on the Provision of aid to citizens of the Czech Republic, which have suffered because of an emergency situation abroad, from now on “**Emergency Guideline**”), čj. (no) 301366/2000-KO/5 is thus also applicable.

Both guidelines are binding internally. Above all, they describe the tasks of consulates, consuls and other consular officers. Many tasks are described generally. Other suitable activities are thus not generally excluded.

2.4. National law

Comprehensive national legislation on diplomatic and consular activities in general and on consular protection in particular does not exist in the Czech Republic.

There are scattered provisions related to consular activities in many Czech statutes.

Tasks of the Ministry of Foreign Affairs are listed in § 6 of *zákon č. 2/1969 Sb. o ministerstvech a jiných ústředních orgánech státní správy* (Statute on Ministries and Other Central Institutions of State Administration) with these words:

“Ministry of Foreign Affairs further: [...] b) ensures protection of rights and interests of the Czech Republic and its nationals abroad; c) administers offices of representation (i.e., diplomatic, consular and special missions) abroad”.

Two departments of the Ministry of Foreign Affairs are responsible for consular services of the Czech Republic: *odbor konzulárních činností* (Department of consular activities) and *odbor konzulárních koncepcí a metodiky* (Department of consular conceptions and methodology), creating together *konzulární sekce* (consular section) of the Ministry headed by *vrchní ředitel* (director general).

Since 2002, *Zákon č. 218/2002 Sb. o službě státních zaměstnanců ve správních úřadech a o odměňování těchto zaměstnanců a ostatních zaměstnanců ve správních úřadech* (Statute on service of State employees in administrative offices and on remuneration of these and other employees of administrative offices) was supposed to apply to officers of diplomatic and consular missions (foreign service). The effect of this statute, however, was postponed for more eight years and further postponement is expected. Therefore, the Ministry of Foreign Affairs now contemplates a special *zákon o zahraniční službě* (Statute of foreign services).

Consular assistance is found in scattered provisions of various statutes, for example in legislation related to administrative fees, on the issuance of passports, marriages abroad, administration of personal issues, engagement in the cooperation of courts etc.

At the moment, there is no bill pending in the Parliament of the Czech Republic, or an otherwise publicized official draft of future legislation which would describe in a detailed manner the organization and structure of the Czech diplomatic and consular services and its tasks.

Nevertheless, the Ministry of Foreign Affairs has commissioned a **study** on the legal framework of consular activities in other European countries.

The study [Bureš P., Svaček O., *Porovnání právní úpravy konzulárního práva ve vybraných zemích EU* (Comparison of Legal Framework of Consular Law in Selected Countries of the European Union), *výzkumný projekt* (research project) RM 06/01/08] was successfully finished in autumn 2009.

This study analyses the legislative frameworks for consular activities of several European countries (Germany, Italy, Poland, Hungary, Portugal, and Estonia). The study pays close attention to consular protection.

The study recommends the codification of standards for consular practice, including the standards of protection of Czech nationals abroad. Besides the establishment of standards for protection, an effort to establish a legal basis for activities of Czech diplomatic and consular missions is perceived as the justification.

Under these circumstances, little is provided in terms of protection of European Union citizens other than Czechs. An exception is, for example, legislation on emergency travel for unrepresented citizens of other Member States.

Article 23 of the Treaty on the Functioning of the European Union and Decision 95/553/EC related to this are perceived to be directly applicable and this direct application is expected to be required.

Web pages of the Czech Ministry of Foreign Affairs reveal that there is general knowledge of this method of protection of Czech citizens abroad. The Ministry publishes a short summary about this protection, provides links to diplomatic and consular services of other Member States, and information about all legal texts and policy documents of the European Union.

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[citizens of Member States of the European Union](#), from now on “**European Citizens Guideline**”), čj. (no.) 300574/2004-KO/05 of 31 March 2004.

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Both guidelines are binding internally. Firstly, they describe tasks of consulates, consuls and other consular officers. Many tasks are described generally. Other suitable activities are thus not excluded in general.

Sometimes, guidelines can be interpreted as recommendations or summarizations of good practice for various situations. Several provisions describe the activities expected from other individuals and institutions, including other Member States of the European Union. Detailed provisions deal with activities which result in a significant financial burden. **The effort to avoid unnecessary expenditures is omnipresent in these guidelines.**

2.5. Documentation of consular protection

Czech **textbooks** on international law usually contain a chapter on diplomatic and consular relations, including passages dealing with consular protection. The views provided are, however, limited to the international legal framework.

Little information is provided about the practice of Czech authorities.

In 1994, the Ministry published a booklet for internal purposes on diplomatic and consular relations and the applicable law.

The Ministry of Foreign Affairs publishes also annual reports. In the latest published report, which is that for the [year 2008](#), consular protection is mentioned as being a task of great importance to society. There are, however, no figures related to consular protection listed and no detailed description of particular consular services in the report.

The Ministry informs about consular protection at an annual press conference at the beginning of the summer tourist season. A corresponding presentation reveals usually key figures about consular protection.

2.6. Information to citizens on consular protection

The Ministry informs on its web pages in Czech language in section *Cestujeme – jak řešit situace v zahraničí* (We are travelling – how to solve situations abroad)³ how to resolve dozens typical situations abroad.

Certainly, this information is no guideline for consular officers, but recommendation for Czech nationals. Nevertheless, they provide indirectly an overview of engagement of Czech consulates. Formulation of these recommendations was required by the decision čj. (no.) 875/2000 of the Cabinet of Ministers.

Following situations are described here: adoption, inheritance, pension, traffic accident, hospitalization, bankruptcy of travel agency, documents for registration of births, marriages, deaths and situations requiring issue of these documents abroad, validation of documents, arrests and imprisonments, missing persons and abductions, fines, technical problems with cars and related restrictions, labour, family and child care, divorce, judicial and administrative proceedings, death of a national, crimes, conclusion of marriage,

³ http://www.mzv.cz/jnp/cz/cestujeme/jak_resit_situace_v_zahranici/index.html

recognition of school diplomas, recognition of documents abroad, visa of foreign countries, issue of travel document including inscription of a child, loss or theft of important items, loss or theft of travel documents, natural disaster, foreign documents (legalization and apostille).

Information for particular situations includes the description of recommended steps, involvement of local authorities and assistance which can be provided by competent consular mission of the Czech Republic.

These guidelines often underline **subsidiary role of Czech authorities**, limitations of their activity resulting from nature of consular protection or from scarce resources.

Links joining web pages of the Ministry to web pages of diplomatic and consular missions of other Member States are listed without any translation of summary information on how to communicate with these missions.

Moreover, the Ministry informs the Czech public repeatedly at **annual press conferences** and through its web pages about the possibility to ask for consular protection at consulates or by contacting consuls of other Member States of the European Union.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Bilateral agreements with third countries do not include provisions protecting Union citizens working and living in third countries.

All bilateral consular agreements were already agreed on before 1990, by former Czechoslovakia. They have not been adjusted to meet new challenges, including obligations resulting from the law of the European Union.

There is no information available to public that the Czech Republic has informed third countries of the practice of extending protection to Union citizens (Art 8 Vienna Convention on Consular Protection).

In the Questionnaire, the Ministry claims that these notifications were made in close cooperation with Slovakia through simple notifications on the working level. No formal notification as laid down in the Vienna Convention on Consular Relations has been done according the Questionnaire. There is no information about an objection of any third country to this practice of protection.

Czech bilateral agreements with third countries do not include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State and foreigners – citizens of third countries - with permanent or long-time residence permit of the Czech Republic.

According to the [European Citizen Guideline](#), the Czech Republic does neither extend consular protection to Union citizens' family members who are not nationals of a Member State nor to long-term or permanent residents of these unrepresented Member States.

However, in the Questionnaire the Ministry claims that the European Citizen Guideline – contrary to its wording (Article 1) – also provides proportional protection to recognized refugees, stateless persons or persons with a residence permit, if this is decided by the relevant officer of the Ministry. There is no information on whether the Czech Republic provides consular protection to its own recognized refugees and/or to its permanent or long-term residents. Similarly there is neither evidence for the assistance, nor on the refusal of assistance to closest relatives (husband and wife, minor children) of Czech citizens.

According to available information, the Czech Republic has not started negotiations concerning agreements with third countries, including provisions protecting Union citizens working and living in third countries. The Czech Republic has also not started negotiations concerning agreements with third countries in order to include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

3.2. Statistical data on consular assistance

Figures for the years 2009 and 2008 are not yet presented on the web pages of the Ministry.

The Annual press conference before the beginning of the tourism period on 10 June 2009 with minister of foreign affairs Jan Kohout present revealed that the number of deaths, road accidents and hospitalizations slightly decreased in comparison with the years before.

The figures for the year 2007 are the following, according to the presentation at the press conference before the beginning of the Czech tourism period on 13 June 2008, which was published in Internet: 2911 issuances travel documents, 81 cases of financial assistance (sale of currency), 1093 reported deprivations of liberty (arrests, detentions etc.), 368 reported hospitalizations, 49 reported deaths, and 501 reported traffic accidents requiring consular assistance.

Figures for previous years (2004, 2005, 2006) reveal an increasing number of cases of consular assistance (travel documents: 2120, 2798, 2552, financial assistance: 64, 72, 58, arrests: 872, 869, 999, hospitalizations: 236, 258, 370, deaths: 301, 421, 397, traffic accidents: 530, 494, 482).

The increases are attributed to the increasing travel activity of Czech citizens in last years and the decrease due to global economic slowdown.

The presentation clearly states that the above mentioned figures reflect assistance provided for Czech nationals.

The above mentioned statistic does not distinguish between assistance to Czech nationals in other Member States of the European Union and in third countries. It can be assumed that the vast majority of assistance was provided in other Member States of the European Union. Travels of Czech nationals to non-member countries are significantly less frequent.

As to consular assistance for unrepresented citizens of other Member States of the European Union No data were disclosed to the public. According to the Questionnaire (point 14), there have been **98 cases of assistance** in years 2005, 2006, and 2007 for unrepresented citizens of other Member States of the European Union.

Further specification is not available. Supposed prevalence of assistance to Slovaks was confirmed unofficially by officers of the Ministry of Foreign Affairs.

Emergency travel documents have been issued to unrepresented nationals of other Member States by Czech authorities in **16 cases** in years 2005, 2006, and 2007. No further information on the nationality of assisted citizens of the European Union is available. It can be also assumed that most these citizens are Slovaks.

As regards consular protection provided to Czech citizens by other Member States' embassies and consulates in the third countries, officers of the Ministry claim both in the Questionnaire and upon my request that these **data are unavailable**.

There is no information about frequency, type and countries where diplomatic and consular missions of other states assist nationals of the Czech Republic. This lack is

explained with no general reporting with exception of financial assistance which has become rare in general in the last years⁴.

4. Consular protection in detail

The number of embassies and consulates of the Czech Republic has clear consequences in terms of the demand of Czech nationals for consular protection.

The Czech Republic has embassies with consular sections in capitals of almost one hundred countries. There are also dozen (professional) consulates or detached offices in other cities of selected bigger countries.

Additionally, approximately 150 honorary consuls are appointed by the Czech Republic. Appointments of honorary consuls are based also on evaluation of need of representation of the Czech Republic and its nationals in countries and territories where professional embassy or consulate is unavailable.

Honorary consuls are competent to provide consular assistance of most types for both Czech nationals and unrepresented citizens of other Member States of the European Union. Czech nationals are informed about the protection provided by honorary consuls. They shall ask honorary consuls for assistance instead of seeking the assistance of diplomatic and consular missions of other Member States.

The information available does not reveal deficiencies with the consular assistance provided by honorary consuls of the Czech Republic in countries where there is no professional diplomatic mission.

The number of countries without a Czech mission is thereby significantly reduced. It is hard to ascertain to which extent this contributes to the reduction of a lack of representation of Czech nationals abroad, because of the unknown number of cases of consular assistance provided to Czech nationals⁵.

Officers of the Ministry of Foreign Affairs appraise good cooperation of embassies and consulates of the Czech Republic with embassies and consulates of other Member

⁴ According to Annual Report of the Ministry of Foreign Affairs for year 2008, embassies and consulates of the Czech Republic administered requests and granted/rejected visa in 650.000 cases.

Czech legislation – frequently amended and extremely detailed *zákon č. 329/1999 Sb., o pobytu cizinců na území České republiky* (Statute on residence of foreigners in the territory of the Czech Republic) implements national policy on long-term immigration from the third countries and visa policy of the European Union in general and for Schengen area in particular.

The statute also reflects free movement of citizens of the European Union, because of absence of special legislation applicable on these privileged foreigners.

Granting of visas is an important task of embassies and consulates of the Czech Republic. Since December 2007 for land borders and March 2008 for air transport, the Czech Republic belongs to Schengen system of removal of systematic border control. Therefore, the Czech Republic shall fully respect requirements of the European Union related to its visa policy. The Czech Republic now grants short-term visas for third country nationals allowing travel to whole Schengen area and long-term “national” visas reflecting policy of the Czech Republic on immigration.

Officers of diplomatic and consular missions in several countries whose nationals perceive the Czech Republic as an attractive country for immigration – Vietnam, Ukraine – were suspected from time to time in Czech newspapers from corruption and acceptance of interference of groups involved in trade in human workforce. Therefore, several measures were adopted to avoid danger of corruption. Overload of consular service here has also led to reorganization of distribution of visas at some locations, including outsourcing of preparatory administration.

Honorary consuls in countries without professional mission are not-in compliance with regulation No. 810/2009 of the European Union entitled to grant visa. They collect, however, requests and distribute travel documents with visa.

⁵ For list of embassies and consulates of the Czech Republic abroad and contacts see: http://www.mzv.cz/jnp/en/diplomatic_missions/czech_missions_abroad/index.html.

States of the European Union and in some cases other European countries in emergency situations affecting large numbers of Europeans.

Nevertheless, there is no published set of guidelines related to cooperation with other Member States in these and other issues. There is also no general description of existing networks of consular assistance.

4.1. Right to consular (and diplomatic) protection

In the Czech Republic, the legal basis for consular services constitutes the Vienna Convention on Consular Relations.

As already explained, there is no national legal standard for consular protection.

European rules are deemed to be directly applicable in the case of protection of citizens of other Member States of the European Union.

It can be concluded that based on Czech law, **there is no right of Czech citizens and/or legal entities to consular protection.**

The Questionnaire (point 8) confirms that there is no appeal procedure against a refusal to provide protection. Therefore, it is difficult to ascertain legal consequences if competent State authorities (the ministry or diplomatic and consular missions) fail to provide protection or provide it with deficiencies or in a poor quality.

At the moment, **there is no case law** of the high courts which publish their decisions on the internet (the Constitutional Court, the Supreme Court, and the Supreme Administrative Court) related to consular protection of Czech nationals.

Nevertheless, there is a quick – and often chaotic – development of Czech case law. Actions for the failure of consular protection could be expected in the foreseeable future. Their result could surprisingly be in favour of individuals neglected by the consular service.

The impetus for such a development could be future legislation on consular activities which is recommended by an internal study. On the other hand, the threat of claims for damages could postpone the enactment of such legislation.

4.2. Assistance in cases of death

The European Citizens Guideline (Article 6) describes the activity of Czech diplomatic or consular mission in favour of unrepresented citizens of other Member States of the European Union. The Ministry of foreign affairs of the home country of the citizen, or the nearest mission of the country shall be **informed**. It is expected that those people then communicate with relatives.

Czech consular assistance expressly includes **aid for relatives to obtain a death certificate.**

There is no guideline for assistance in cases of death of Czech citizens abroad. It can be assumed that apart from communication with authorities of other Member States, the procedure is similar.

The number of deaths of Czech tourists abroad is quite high. Czech tourists are often undisciplined in sports, and overestimate their strength. The Ministry issues recommendations and explicit warnings.

It shall be underlined that most Czechs tend to spend little money for funeral services. Cheap methods of disposal of the body, especially cremation, are prevalent.

4.2.1. Identifying and repatriating remains

There is no explicit guideline in European Citizens Guideline on the assistance for the identification of corpses and parts of human bodies when it is presumed that unrepresented citizens of other Member States are concerned.

According to the guideline of above mentioned close relatives, it is expected to provide aid with a funeral or the repatriation of remains. There is no information, however, about possible expenditures. Because of detailed provisions on financial aid it can be assumed that bigger expenditures are not covered by the mission.

The extent of assistance to Czech citizens is obviously similar, apart from communication with authorities of other Member States. There are no specific provisions in the Emergency Guideline on death and the repatriation of remains.

Commercial travel insurance usually covers the repatriation of remains.

4.3. Assistance in cases of serious accident or serious illness

Provisions of the European Citizens Guideline (Article 7) seem to promise more than what is really provided. As a principle, feasible assistance of every kind is expected. This does not, however, include the financing of health care.

Obviously, citizens of other Member States are not privileged.

The European Citizens Guideline describes in a more realistic manner the activities of Czech diplomatic or consular missions. Assistance includes the information of the family or the employer with mediation of authorities of home Member States, visits and the consultation on suitable care.

If expenditures occur, a confirmation of the obligation must be signed by assisted unrepresented citizens of other Member States, if this is possible.

There is no provision on the limitation of expenditures, but the policy is obviously aimed at reducing public expenses.

Czech nationals are repeatedly told to arrange travel health care expenses insurance by private insurers.

It is underlined that the Czech Republic and its public healthcare funds in general do not pay for care abroad or only pay same sum as at home.

Certainly, the exception is the system of coordination of public health care financing of the European Union, symbolized by the European Health Insurance Card. Information about the scope of coverage in European countries is provided by *Centrum mezistátních úhrad* (Center of Interstate Payments) of the Czech public health care insurers and the Ministry of Health Care.

The European Citizens Guideline describes the information to be collected: information about health care insurance, confirmation of the necessity of repatriation, names and addresses of relatives, the name of the family physician, the nature of the illness or wounds, requirements related to treatment, and the necessary medication.

The Guideline underlines the liability of relatives to pay for expenses for repatriation of seriously ill or wounded unrepresented citizens of other Member States of the European Union.

Attention is given to the repatriation of seriously ill or wounded Czech citizens in the Emergency Guideline. Information and cooperation of the Ministry of Health Care is expected.

4.4. Assistance in cases of arrest or detention

The European Citizens Guideline contains a detailed provision (Article 8) on the assistance to unrepresented citizens of other Member States.

The relevance of Article 36 of the Vienna Convention on Consular Relations is confirmed here. Nothing shall preclude its application.

Czech diplomatic or consular missions inform the ministry or the nearest mission of the home Member State.

The following data shall be collected and reported by the Czech consulate: name of arrested, nationality, passport number and type, date and place of birth, address, names, addresses and phone numbers of relatives, information whether these relatives shall be informed, crimes alleged by national authorities, place of arrest, suitable language for communication, name and address of legal aid if contracted or assigned, possibility of bail, punishments which can be imposed.

The mission shall pay attention to the conditions of detention and their improvement. It shall insist on the observance of the United Nations Minimal Standards for Detention of Prisoners.

Assistance is described in detailed manner:

- a) The mission shall inform arrested or detained unrepresented European Union citizens about local laws and conditions for legal aid. An information letter is expected, if possible in the language of the arrested citizen,
- b) The arrested or detained citizen shall be visited quickly. If necessary, interpreting is to be provided with the consent of home State authorities. Those authorities shall cover expenditures. Special attention shall be paid to a possible complaint on bad treatment.
- c) The possibility of parole or clemency shall be investigated.
- d) The engagement of local legal counseling is expected. The mission shall inform the arrested citizen about the accessibility of counseling. If the arrested person has no money, reimbursement is to be mediated. The responsibility of home country institutions is expected. If necessary, Czech missions will mediate payments.
- e) After arrest or detention, financial aid for repatriation is expected.
- f) The mission shall intermediate payment of bail or fine, if the arrested citizen is incapable to do it. The engagement of the home Member State is expected.

Similar assistance is provided to assisted nationals of the Czech Republic. There, is however, no codification of practice. The Emergency Guideline does not contain any rules for engagement of consular officers in cases of arrests and detention of Czech nationals abroad.

The number of arrests and detentions of Czech nationals abroad is comparatively high (see above mentioned figures in the section on statistics). Therefore, the Ministry strongly recommends obeying local laws of host countries. Special attention is paid to drug crimes, because the number of arrests for these crimes is alarming.

4.5. Assistance to victims of violent crime

The European Citizens Guideline (Article 9) expects speedy and effective assistance to unrepresented citizens of other Member States. It is expected that also assistance for medical and legal care is provided. Special attention has to be paid to guarantee satisfaction whenever possible. Home Member State authorities shall be informed about all relevant aspects of crimes and their victims.

On the other hand, the Emergency Guideline does not expect specific assistance to victims of violent crimes which are Czech nationals. Nevertheless, their situation would

be usually evaluated by consular officers as deserving special assistance. Therefore, provisions allowing expensive assistance and expenditures can be applied for alleviation of situation of victims of violent crime.

4.6. Relief and repatriation of distressed citizens

The Emergency Guideline provides rules for relief and repatriation of distressed nationals. If possible, repatriation shall be organized by distressed national. Assistance related to money transfer or financial advance can be supported. If necessary, consular officers can purchase tickets for repatriation and other means.

Repatriation is arranged by consular officer in case of wounded and seriously ill nationals who are incapable to take care for themselves. **In general, costs for this repatriation result in debt of repatriated person.** Special attention is paid to repatriation of mentally or psychically ill nationals. Cooperation with local authorities of the foreign country and the Ministry of Health Care of the Czech Republic is expected in these cases.

According to *zákon č. 359/1999 Sb., o sociálně právní ochraně dětí* (Statute on Socio-Legal Protection of Children) Czech embassies and consulates are required to repatriate minors left without care abroad due to various reasons (arrests, deaths, injuries and illnesses of parents or other caregivers).

The Ministry of Foreign affairs informs with its Internet presentation and with publications about addresses and means of communication (phone numbers, fax numbers, and e-mails) of its departments and embassies and consulates of the Czech Republic abroad. Opening hours (local time) are indicated.

There is no phone number which is advertised for communication of distressed Czech nationals abroad round the clock which can mobilize Czech diplomatic and consular officers which are unavailable at the moment at their offices and provide adequate advice for solution of distress. Project to establish central phone number (800) paid by the Ministry as receiver of calls was abandoned for technical and financial reasons. Nevertheless, the Ministry of Foreign Affairs has non-stop center where calls from abroad to the Ministry are directed in evening, nights, weekends and public holidays.

The Ministry of Foreign Affairs launched in year 2009 a new Internet application DROZD “Throstle” (*Dobrovolná registrace občanů České republiky při cestách do zahraničí* - Voluntary registration of citizens of the Czech Republic travelling abroad⁶).

Czech nationals travelling and living abroad can submit information about their residence abroad (name of registering individual and accompanying persons, dates of departure and return, places of their stays and residence abroad, contacts for their family members or friends, and their own contact information – phone numbers, e-mails etc). This application makes easier communication with these Czech nationals in emergency situations and in cases of distress affecting individuals. Entries are deleted in expected period after date indicating return due to requirements of protection of personal data.

At the moment, however, DROZD does not provide non-stop Internet communication channel for Czech nationals in distress for instant mobilization of nearest diplomatic personnel and for the coordination of assistance by the Ministry of Foreign Affairs.

⁶ See <http://drozd.mzv.cz>

4.6.1. *Natural disasters*

Earthquake and subsequent **tsunami** wave in southeast Asia in December 2004 was probably the greatest challenge for consular service of the Czech Republic. Several hundred Czech tourists were affected in Thailand, Sri Lanka and in Indonesia. Dozens of persons were reported missing for many days after the event, many were, however, not present at affected places. The Ministry has established special coordination commission at its headquarters in Prague. There is professional diplomatic and consular mission in Thailand and in Indonesia. Sri Lanka was covered by Czech consular staff in India. Evacuation of Czech tourists including those wounded was organized mostly by travel agencies, several special flights were organized. Genetic samples were provided by relatives of persons suspected to be dead and provided by Czech authorities to authorities of affected Member States. At the end, death toll of Czech nationals was seven (six in Thailand and one in Sri Lanka), several other Czechs were injured. There was no subsequent criticism of engagement of authorities of the Czech Republic. Therefore, the event does not cause to rethinking of consular practice.

On the other hand, earthquake affecting **Haiti** in January 2010 required limited engagement of Czech authorities due to few Czech nationals there, mostly missionaries and volunteers of non-government organizations experienced with economic and social conditions of this country. Apart from communication, no specific engagement of Czech authorities was necessary.

4.6.2. *Terrorist acts*

Fortunately, Czech nationals are seldom victims of terrorist acts. Even 11 September 2001 Attacks on World Trade Center in New York caused no Czech death toll. In such events, consular missions routinely check lists of victims and assist with seeking for missing persons. Information from the Ministry of Foreign Affairs or from consulates is often mentioned in press and in television.

4.6.3. *Pandemics*

Epidemics of swine (Mexican) flu in years 2009 and 2010 caused little direct engagement of Czech missions abroad. Czech nationals were discouraged from travelling affected regions of Mexico. Situation was observed. Checks of people returning from Mexico were expected by Czech domestic authorities. Recommendations of the World Health Organization were adopted.

4.6.4. *Military conflicts*

Israeli military campaign against militarized factions and groups involved in terrorism in year 2006 required repatriation of several hundred Czech nationals from **Lebanon**. There is an embassy of the Czech Republic with consular department in Beirut. Repatriation was realized in close cooperation with missions of other Member States, for example with Italy. Assistance was provided also by Czech consular mission for nationals of other Member States including these Member States represented in Lebanon. Cyprus was country of direct evacuation by vessels. Subsequently, places in flights from Cyprus where Czech mission also exists were found by the Ministry and special flights were organized by the Czech Republic too.

Another recent conflict which required repatriation was intervention of **Georgia** in its south Ossetia region and subsequent invasion of Russia, resulting in near-war between these two countries. Czech Republic has embassy in Georgia. Partial repatriation of

dozens of Czech nationals was agreed with Poland and realized with its military aircraft from nearby Armenia.

4.6.5. Financial Advances

Subsidies for necessary subsistence, accommodation, transportation, health care and other necessary goods and services are expected as last resort. They shall be provided as sale of foreign currency or, if necessary, as loan. Guidelines include forms of recognition of resulting debt. Various guarantees are required, because many Czech debtors are defaulting.

The number of financial advances for distressed Czech nationals abroad is decreasing in recent years. It is explained with new methods of transfer of money and new methods of communication of individuals and with permanent reluctance to provide financial assistance as welfare.

In emergency situations affecting larger groups of Czech nationals (traffic accidents, natural catastrophes, policy of the Ministry of Foreign affairs and engaged diplomatic and consular missions is more benevolent. Necessary goods (food, pharmaceuticals) and services (accommodation, transportation from endangered places and evacuation) can be provided for subsidized prices or for free.

Little information is, however, available about financing of these operations, including sharing of costs of these operations with other Member States acting in cooperation.

4.6.6. Money transfers

The Emergency Guideline clearly prefers assistance for insolvent nationals abroad in distress in transfer of money from domestic private resources (temporarily unavailable own assets, aid of relatives and friends).

Consulates are capable to provide assistance for realization of transfer with use of new payment methods and services (Western Union is expressly mentioned).

4.7. Consular fees

Zákon č. 634/2004 Sb., o správních poplatcích (Statute on Administrative Fees) in its applicable version contains **special provisions about consular fees (part XII) required for decisions and services requested by both foreigners and Czech nationals**. There are specific rules about procedure conducted by Czech diplomatic and consular missions, acceptance of foreign currencies (applicable exchange rates), waiver of fees for political reasons, competence to claim special costs.

Fees for visa are significantly higher than fees for other services. Waiver is expected for relatives of European Union and the European Economic Area citizens, children, diplomats, expected foreign officers, pupils, students, accompanying and visiting teachers, researchers supported by the European Union. Ministry is entitled to reduce visa fees while supporting development of political and cultural relations, or for humanitarian reasons.

Fees are also imposed on Czech nationals for consular conclusion of marriage, for requests transferred by consular mission, for collection of claims, rents, assistance in inheritance proceedings, deposits of cash, precious objects, documentation etc, including special fee for their delivery to the Czech Republic, for notary services, for legalization of foreign documents, for translations, for birth, marriage, or death certificates and for their translation, for travel passports and emergency travel documents of the European Union, for inscription of children in these documents, for

documents accompanying remnants of deceased person, for certificates related to domicile, nationality, and criminal history.

Certificates for importation of weapons by foreigners (with exception of weapons for international competitions), for request for residence and employment permit, and for certificate of criminal history in the Czech Republic are also issued for fees.

Apart from fees established in above mentioned legislation on fees, the Czech Republic does not calculate costs of its own engagement as cost which shall be paid by Czech nationals in distress.

4.8. Reimbursement of the assisting State

General provision for reimbursement of services exists in bilateral treaty with Slovakia and details are fixed in accompanying arrangement. Aid and repatriation is expected to be reimbursed. Real expenses shall be calculated, if necessary according to proportion of nationals of both countries.

Allegedly, rules set by the European Union for reimbursement of costs between Member States related to protection of unrepresented citizens of the European Union are applied directly. No detailed information about practice is available.

5. Emergency travel document (ETD)

***Náhradní cestovní doklad* (surrogate travel document) is issued by Czech diplomatic and consular missions according to two different legislations: one for Czech nationals and one for citizens of unrepresented Member States of the European Union.**

Zákon č. 329/1999 Sb., o cestovních dokladech (Statute on Travel Documents) describes the surrogate travel document issued for Czech nationals.

Zákon č. 329/1999 Sb., o pobytu cizinců na území České republiky (Statute on the Stay of Foreigners on the Territory of the Czech Republic) provides with its § 115a for surrogate/emergency travel documents for unrepresented citizens of other Member States assisted by the Czech diplomatic or consular mission.

Principles set by the Council decision 96/409/CFSP on emergency travel documents are mentioned in the above mentioned provision: conditions for the issue are described, including the approval of the home Member State, the one-way purpose, and the collected data are listed and their exchange is expected.

The European Citizens Guideline repeats (Article 11) provisions of the above mentioned act and specifies some technical and administrative aspects.

The Guideline allows the issuance of this travel document to individuals accepted by unrepresented other Member States. This seems to be an exception from the personal scope of the Guideline.

It is, however, unclear whether persons without citizenship of the European Union - residents of Member States, stateless persons, and refugees - belong to this group. Nevertheless, such an approach is not expected in the legislation. Here, the guideline seems to provide an illegal solution.

According to law of the European Union (so-called Schengen acquis), Czech nationals are entitled to travel to other Member States of the European Union with their identity cards only. Nevertheless, issuance of travel document (passport, temporary travel document) is expected also in case of theft or loss of these cards. No requests for issuance and for delivery mediated by embassies and consulates of the Czech Republic are expected by legislation on identity cards (citizen's cards).

6. Exercise of consular functions for expats

Administrative services for expatriates

Remote access to public registers CZECH POINT (certificates related to criminal history, land registry, commercial registry, registry of driver offences, insolvency registry and others) is available at 39 embassies and consulates of the Czech Republic⁷.

Elections abroad by expatriates and e-voting

Czech nationals residing and staying abroad are entitled to cast their vote in elections of the Chamber of Deputies of the Parliament of the Czech Republic abroad after specific registration. Complexity of this registration, however, results in low interest (6000 nationals only registered for elections in May 2010).

According to electoral legislation, embassies and consulates of the Czech Republic are expected to organize these elections and to communicate their results to Czech authorities for organization of elections (electoral commissions of various levels)

Czech law does not expect now an e-voting.

Driving licenses for expatriates (and travelers)

According to legislation of the European Union and applicable international conventions, foreigners residing in the Czech Republic are expected to pass Czech examinations. Similar requirement is expected to be applied on Czech expatriates by foreign countries. There is legal provision and no information about assistance of Czech embassies and consulates for Czech nationals residing abroad in these cases.

Consular assistance for Czech nationals (and residents respectively) which have lost, stolen or damaged driving licenses abroad is not mentioned in mentioned guidelines for solution of troublesome situations abroad. No specific rules are expected in legislation on driving licenses for requests for duplicates from abroad and for delivery with assistance of embassies and consulates of the Czech Republic.

Passports and identity cards for expatriates

A travel document of the Czech Republic (passport, temporary travel document) is issued for fee on request of Czech national abroad in case of loss or theft, or to Czech national residing abroad in case of expiration according to *zákon č. 329/1999 Sb., o cestovních dokladech* (statute on travel documents).

Identity cards are delivered for Czech nationals domiciled in the Czech Republic (*občanský průkaz* – citizen's card) and for foreigners with long-term and permanent residence permit. Czech nationals residing abroad are not expected to have such identity card. They use Czech travel passports, certificates of Czech nationality and birth certificates for their identification.

Military service (conscription of expatriates)

Apart from possible future war situations, there is no conscription of Czech nationals in the Czech Republic since 2005. Therefore, no engagement of consular missions of the Czech Republic is expected in this agenda.

Notarial agenda and civil registry

Certification of documents issued by a receiving country by local consular mission of the Czech Republic (so-called [super] legalization), if Hague Convention abolishing the Requirement of Legalization for Foreign public Document is not applicable. According to this convention, Czech apostille is granted by consular mission of the Czech Republic. Honorary consuls of the Czech Republic abroad are not entitled to perform these tasks due to their specific requirements.

⁷ For information about the service see <http://www.czechpoint.cz>

Marriages abroad

Zákon č. 94/1963 Sb., o rodině (Statute on family) allows conclusion of marriage involving one or two Czech nationals at consular mission. High fee is, however, required for it.

Health services for expatriates

Czech diplomatic and consular missions underline that nationals travelling and residing abroad are not covered by Czech public health care insurance.

The only exception is reimbursement within the European Union (former regulation 1408/71, now replaced with regulation 883/2004 and case-law of the Court of Justice on reimbursement). This reimbursement, however, does not include repatriation of ill and wounded national and repatriation of remnants. Therefore, private insurance is strongly recommended to Czech nationals travelling to both countries of the European Union and to the rest of the World.

Furthermore, expatriates quit public health care insurance of the Czech Republic. They must comply with laws of host country, including taxation and compulsory inclusion of system of public financing of health care there.

There is no specific health care support for Czech expatriates facing troubles with health and suffering from unavailability of health care due to lack of appropriate public or private insurance in country of their residence. Nevertheless, their return to Czech public system is quite easy.

Assistance for Expatriates related to their Administrative and Judicial Affairs at Home

No legislation expects assistance of embassies and consulates of the Czech Republic for Czech nationals residing abroad related to administration of their affairs at home (social security, inheritance proceedings, property claims and disputes, collection of requests and delivery of various documents and certificates). Here, representation by relatives or attorneys at home is expected.

Registration (as an expatriate)

Residence of a Czech national is registered according to special legislation. Intention of a Czech national to settle abroad shall be notified. Nevertheless, foreign residence is not registered by any authority of the Czech Republic.

DROZD provides tool for their voluntary registration for both travelers and expatriates – nationals of the Czech Republic.

Embassies and consulates in exotic and troublesome countries maintain close contacts with nationals of the Czech Republic residing in these countries. In many such cases, these long-term residents are detached by Czech companies and institutions and these entities maintain such close contacts. Nevertheless, no legally based system of registration exists for this purpose.

Social services for expatriates

Consular missions are also not expected to distribute or assist in administration of Czech pensions and social aid abroad (if benefits can be exported at all).

The only social engagement for ethnic Czechs living for generations abroad is support of health care, education and culture in Romania, Ukraine, Russia, and Kazakhstan. These Czechs were also repatriated to the Czech Republic since 1990.

Consular missions of the Czech Republic are extremely reluctant to support Czech nationals imprisoned abroad.

Inheritance questions

Czech nationals are informed about inheritance proceedings abroad. If accepted by receiving State, consuls can theoretically represent them in inheritance proceedings. There is no specific legal framework for it.

Social security questions

Consular missions of the Czech Republic are not expected to represent Czech nationals abroad as regards their rights towards foreign social security systems. Embassies and consulates can provide basic advice. Advisory role of the Ministry of Labor and Social Affairs is also expected.

Property questions

Theoretically, Czech nationals can be represented by consular officers in proceedings related to property in cases deserving special care. In other cases, the role of embassies and consulates is limited to first advice.

7. Summary

Assistance to unrepresented citizens of other Member States of the European Union seems to form only a thin part of the consular agenda of Czech diplomatic and consular missions. Therefore, the legal and political attention paid to this issue is limited.

Due to the European legal framework and the interest of the European Union for the protection of unrepresented citizens of other Member States of the European Union, internal Czech rules are in fact more elaborated for the protection of unrepresented Union citizens than the rules for the similar protection of Czech citizens are. The lack of a comprehensive Czech legal framework for consular protection shall be, however, underlined.

It shall be assumed that Czech consular services assist mainly Slovak nationals when dealing with unrepresented third-country nationals. Close cooperation with Slovakia is based on legal framework and is confirmed by officers of the Ministry. Slovakia, being the less populous country, has a less extensive network of diplomatic and consular missions. This assistance has a long tradition, as it exists since the dissolution of former Czechoslovakia. It also does not require translation and interpretation, because Czech and Slovak languages are mutually intelligible.

8. List of important documents

1.

Identification number: Č.j. 300574/2004-KO/5

Czech Title: Směrnice o konzulární ochraně občanů členských států EU (Ministerstvo zahraničních věcí České republiky)

English Title: Guideline on consular protection of nationals of the Member States of the European Union (the Ministry of Foreign Affairs of the Czech Republic)

2.

Identification number: 120/2003 Sb.m.s. + 75/2003 Sb.

Czech Title: UJEDNÁNÍ mezi Ministerstvem zahraničních věcí České republiky a Ministerstvem zahraničních věcí Slovenské republiky o spolupráci v oblasti konzulárních služeb + upřesnění finančních otázek

English Title: Understanding between the Ministry of Foreign Affairs of the Czech Republic and the Ministry of Foreign Affairs of the Slovak Republic on cooperation in area of consular services + clarification of financial aspects

3.

Identification number: 634/2004 Sb.

Czech Title ZÁKON o správních poplatcích

English Title: Statute on Administrative Fees

4.

Identification number: 301/2000 Sb.

Czech Title ZÁKON o matrikách, jménu a příjmení a o změně některých souvisejících zákonů

English Title: Statute on civil registry and on names and surnames

5.

Identification number: 40/1993 Sb.

Czech Title ZÁKON České národní rady o nabývání a pozbývání státního občanství České republiky

English Title: Statute on Acquisition and Loss of Nationality of the Czech Republic

6.

Identification number: 326/1999 Sb.

Czech Title ZÁKON o pobytu cizinců na území České republiky a o změně některých zákonů

English Title: Statute on Residence of Foreigners on the Territory of the Czech Republic

7.

Identification number: 329/1999 Sb.

Czech Title ZÁKON o cestovních dokladech

English Title: Statute on Acquisition and Loss of Nationality of the Czech Republic



Denmark - Danmark (DK)

1. Introduction

This Report contains the legal framework and national practice of Denmark on consular and diplomatic protection as of 1 January 2010.

The basis of the report is: the official legal information system *Retsinformation*¹, the website of the Ministry of Foreign Affairs of Denmark², interviews with officials from this Ministry and the Ministry's Instructions on Consular Affairs (*Borgerserviceinstruksen*).

1.1. Terminology - National acronyms and definitions

UM (*Udenrigsministeriet*): Ministry of Foreign Affairs of Denmark.

Consular Services (*Borgerservice*): unit of the Ministry of Foreign Affairs of Denmark for citizens support.

Instructions on Consular Affairs (*Borgerserviceinstruksen*), Instructions issued by the Ministry of Foreign Affairs of Denmark concerning consular assistance.

2. Legal framework

Denmark's legal framework consists of bilateral and multilateral treaties to which Denmark is a contracting party; obligations under the EC treaty; national legislation, State policy and practice.

2.1. International law

Denmark is/is not a party to the following multilateral conventions:

- Vienna Convention on Consular Relations: ratified 15 November 1972 (Act. No. 67 of 8 March 1972). Reservations have been made in respect of Art. 5(j),³ Art. 22⁴ and Art. 68.⁵

¹ www.retsinformation.dk

² www.um.dk

³ "In respect of Article 5 (j), consular posts established in Denmark by foreign States may not, except by virtue of a special agreement, execute letters rogatory or commissions to take evidence for the courts of the sending State, and may transmit judicial and extra-judicial documents only in civil or commercial matters."

⁴ "With reference to Article 22, the Government of Denmark expresses the wish that it may be possible to maintain the practice existing between Denmark and a number of other countries to appoint honorary consular officers from among persons having the nationality of the receiving State or of a third State; the Government of Denmark further expresses the hope that States with which Denmark establishes consular relations will give their consent, pursuant to paragraphs 2 and 3 of Article 22, to the appointment of honorary consuls having the nationality of the receiving State or a third State."

⁵ "With reference to Article 68, the Government of Denmark expresses its desire, in accordance with Danish practice, to continue appointing honorary consular officers and, on condition of reciprocity, its willingness to continue receiving honorary consular officers in Denmark."

- o Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes: ratified 15 November 1972 (Act. No. 67 of 8 March 1972). No reservations have been made.
- o Vienna Convention on Consular Relations Optional Protocol concerning Acquisition of Nationality: ratified 15 November 1972 (Act. No. 67 of 8 March 1972). No reservations have been made.
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80): Not party.

In 1962, Denmark entered into a bilateral agreement with the United Kingdom on consular protection. The agreement includes provisions on *inter alia* appointment, immunities, privileges and general consular functions. It is still in force.

Denmark is party to the Treaty of Cooperation between Denmark, Finland, Iceland, Norway and Sweden (Helsinki Treaty).⁶ Denmark is also party to the Nordic Convention of 18 August 2003 between Denmark, Finland, Iceland, Norway and Sweden on Social Security (the original Convention was adopted in 1955). Further details on the cooperation between the Nordic countries are provided below.

2.2. Transposition of international law into national law

In Denmark, international treaties are not directly applicable. In order to have legal effect, an international treaty must either be incorporated into national law, or Danish rules (not particularly concerning the treaty) must leave room for taking it into account by interpretation.

2.3. Implementation of European law into national law

Art. 23 TFEU, Decision 95/553/EC and Decision 96/407/CSFP were transposed through revisions of the “Instructions on Consular Affairs” (*Borgerserviceinstruksen*).

2.4. National law

Denmark provides consular assistance to Danish citizens abroad under the Foreign Service Act (*Lov om Udenrigstjenesten*), complemented by lower ranking regulations such as the Instructions on Consular Affairs (**not a publicly available document**) and the Executive Order on payment for services provided by the Danish foreign services. Consequently, consular assistance is provided under law and not as a matter of policy.

No separate national consular law exists. However, section 1(3) of Act No. 150 of 13 April 1983 on the Danish Foreign Service (as last amended by Act No. 410 of 6 June 2002) stipulates that the Danish Foreign Service provides assistance to Danish citizens and Danish enterprises in their commercial relations with foreign countries. **This provision is interpreted so as to include a right to consular assistance.** The Instructions on Consular Affairs, which have the force of administrative circulars, describe the way in which assistance is to be provided. Complaints about inadequate assistance are handled by the Ministry of Foreign Affairs. As a last resort, a complaint can also be lodged through the legal system.

⁶ The Helsinki Treaty was last amended in Copenhagen on 29 September 1995.

2.5. Documentation of consular protection

Documentation of consular assistance provided by Denmark can primarily be found on the website of Ministry of Foreign Affairs of Denmark⁷ and in the Ministry's Instructions on Consular Affairs.

Relevant legal documents can be obtained from the official legal information system *Retsinformation*⁸.

2.6. Information to citizens on consular protection

The website of the Ministry of Foreign Affairs of Denmark⁹ contains detailed information to citizens about consular assistance. In addition, all Danish embassies have their own website.

In 2007, the Ministry of Foreign Affairs of Denmark established a '24/7-citizen support centre' which provides assistance to citizens over the telephone 24 hours a day 7 days a week.

Finally, the Ministry provides information about its services at international travel fairs held in two major Danish cities each year.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Denmark's bilateral and multilateral agreements with third countries do not include provisions protecting Union citizens working and living in third countries.

Denmark has not informed third countries about the practice of extending protection to Union citizens (Art 8 Vienna Convention on Consular Protection).

Denmark's bilateral and multilateral agreements with third countries do not include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

As a general rule, Denmark does not extend consular protection to Union citizens' family members who are not nationals of a Member State. **Assistance to such family members is subject to consent by the home State of the Union citizen in question. Exceptions may exist in cases of evacuations.** Denmark has not informed third countries of this practice.

Denmark has not started negotiations concerning agreements with third countries that include provisions protecting Union citizens working and living in third countries.

Denmark has not started negotiations concerning agreements with third countries that include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

3.2. Statistical data on consular practice

The Ministry of Foreign Affairs affirms that providing consular assistance to Danes abroad is one of its highest priorities and that Denmark offers extensive consular services to its citizens. According to the Ministry, **no resources are allocated to collection of statistical data** regarding the amount or nature of the consular assistance provided to Danes and unrepresented EU citizens abroad, because

⁷ www.um.dk

⁸ www.retsinformation.dk

⁹ www.um.dk, particularly www.um.dk/da/menu/Borgerservice/

the Ministry strives to provide the best possible consular assistance and gives priority to this practical work.

Previously, some statistical data was collected. According to the 2005 Annual Report of the Foreign Ministry, there were 6.183 cases of “assistance to distressed Danes and other cases of assistance” that year. In comparison there were 3.901 cases in 2001, 4.745 in 2002, 4.334 in 2003 and 5.033 in 2004.¹⁰ In 2006, Danish embassies and consulates provided assistance in 3.536 (not counting the Lebanon evacuation), and in addition approx. 450 cases were handled by Danish honorary consulates.

As a general rule, Denmark will offer assistance to unrepresented EU citizens in the same way as to Danes. In practice, the Danish representation will contact the relevant embassy of the EU Member State and assist the unrepresented citizen in dialogue and cooperation with this embassy.

4. Consular protection in detail

Denmark is party to the Treaty of Cooperation between Denmark, Finland, Iceland, Norway and Sweden (Helsinki Treaty). Article 34 of the original treaty signed in Helsinki on 23 March 1962 reads:

“Public Officials in the Foreign Services of any of the High Contracting Parties who are serving outside the Nordic countries shall, to the extent that it is compatible with their duties and when no objection is lodged by the country in which they are serving, also be of assistance to citizens of the other Nordic countries, should the latter not be represented in the territory concerned.”

On 26 August 2005, during a meeting in Bornholm, **the Nordic Ministers of Foreign Affairs decided to improve the cooperation between the Member States of the Nordic Ministers Council in crisis situations.** The aim was to provide the Nordic embassies and capitals with a set of practical tools to improve the assistance provided to citizens of the Nordic countries in crisis situations. Accordingly, the Nordic capitals have intensified their exchange of information and expanded their contact networks. Also, joint exercises of crisis management are held. The cooperation is developed further through division of tasks between the Nordic representations abroad. The embassies incorporate the Nordic collaboration into their contingency plans and consider the possibility of joint crisis management, including shared crisis management centers, evacuation plans and exercises. The Nordic cooperation was brought into effect during the evacuation from Lebanon in July 2006, cf. below.

Denmark is also party to the Nordic Convention of 18 August 2003 between Denmark, Finland, Iceland, Norway and Sweden on Social Security (the original Convention was adopted in 1955). Article 7 provides that a State party is obliged to pay for transportation back to the home State, when citizens or residents of the other parties become ill or injured during a temporary stay on its territory.¹¹

¹⁰ It is noted that there had been a change in the method of calculation and that therefore the numbers could not be compared directly. Also, it was noted that the 4.500 cases of assistance during the 2004 tsunami-disaster were not included.

¹¹ The transportation back to the home State must be prescribed by a doctor and it must be more expensive than the transportation originally planned by the citizen or resident. The provision does not apply, when the purpose of the stay is a medical treatment.

4.1. Right to consular (and diplomatic) protection

As stated above, there is no separate national law on consular assistance. **Section 1(3) of Act No. 150 of 13 April 1983 on the Danish Foreign Service affirms, however, that assistance is provided to Danish citizens and Danish enterprises in their commercial relations with foreign countries. This provision is interpreted so as to include a right to consular assistance¹².**

Based on administrative practice and in accordance with the “Instructions on Consular Affairs” (*Borgerserviceinstruksen*), assistance is provided to

- Danish nationals and aliens permanently residing in Denmark,
- unrepresented Nordic nationals and aliens permanently residing in the other Nordic countries¹³ and
- citizens of unrepresented EU Member States¹⁴

In general, consular assistance is not extended to family members who are not nationals or permanent residents in a Member State.

Relevant case law on the rules for consular assistance does not exist.

4.2. Assistance in cases of death / Identifying and repatriating remains

The Foreign Ministry **informs** the national police who contact the next-of-kin as soon as possible.

Danish diplomatic or consular missions – with the consent of the next-of-kin – assist in obtaining a death certificate and in arranging for the body to be buried, cremated or repatriated to the home country.

Next-of-kin covers the costs of the funeral etc.

4.3. Assistance in cases of serious accident or serious illness

Danish diplomatic or consular missions **inform** next-of-kin, **arrange visits or give advice** on reputable clinics and doctors.

Medical treatment, transportation to Denmark and, if necessary, evacuation are covered through **individual travel insurance**.¹⁵

4.4. Assistance in cases of arrest or detention

Upon notification by the authorities of the receiving State, the Danish diplomatic or consular missions work to determine as quickly as possible whether the detained citizen requires assistance in finding appropriate legal counsel or contacting the next-of-kin in Denmark or whether the citizen needs other help including for example special food or medicine. If notified by the authorities of the receiving State that the citizen declines assistance, the mission must – if possible – obtain written confirmation of this information.

Unless he/she opposes, the detainee is **visited** on a regular basis and the mission will **monitor** the course of his/her trial.

¹² The term “consular services“ or “consular assistance” are usually used rather than consular protection.

¹³ Finland, Iceland, Norway and Sweden.

¹⁴ The instructions include a chapter on international cooperation according to which the Danish representations abroad are required to participate actively in local consular cooperation with other Nordic countries as well as EU Member States.

¹⁵ Special rules apply under the Nordic Convention of 18 August 2003 between Denmark, Finland, Iceland, Norway and Sweden on Social Security, cf. above.

The Danish diplomatic or consular missions observe the receiving State's compliance with international law (treatment of foreigners) and domestic law.

4.5. Assistance to victims of violent crime

Danish diplomatic or consular missions provide **advice and practical assistance**.

4.6. Relief and repatriation of distressed citizens

Danish diplomatic or consular missions **provide advice and practical assistance. Evacuations are organized in case of urgent necessity.**

Denmark is – jointly with Austria – a consular “Lead State” for Bhutan. No particular practice has been reported so far.

4.6.1. Natural disasters

Danish consular and diplomatic missions immediately establish **contact with citizens** in order to provide support and, if required, organize evacuations as soon as possible (e.g., Tsunami December 2004).

Haiti January 2010: The Ministry of Foreign Affairs of Denmark knew of 11 Danish citizens who were in Haiti during the earthquake in January 2010. Since Denmark has no embassy on Haiti a special unit from the Ministry was sent to Port-au-Prince to provide assistance.

4.6.2. Terrorist acts

Danish consular and diplomatic missions contact local authorities in order to establish whether Danish citizens are involved and if necessary provide support. Support to next-of-kin of possible victims is also given.

4.6.3. Pandemics

Danish consular and diplomatic missions contact local authorities in order to establish whether Danish citizens are involved and if necessary provide support.

4.6.4. Military conflicts

Danish consular and diplomatic missions contact local authorities in order to establish whether Danish citizens are involved and if necessary provide support. **Evacuations are organized immediately if necessary.**

During the crisis in **Lebanon** in July 2006, Denmark chartered a ferry, which transported Danish citizens from Beirut to Cyprus. The ferry made the trip approx. 4 times and vacant places were offered to citizens of the other Nordic countries as well as EU citizens. The same offers were made with regard to vacant places on a bus convoy organized by Denmark.

4.6.5. Financial advances

As a matter of principle, **financial advances are conditional upon a written guarantee or transfer of money to the embassy or consulate in question.** This rule applies equally to Danish nationals and aliens permanently residing in Denmark, unrepresented Nordic nationals and aliens permanently residing in the other Nordic countries, and citizens of unrepresented EU Member States.

4.7. Consular fees

Pursuant to section 14(1) of Act No. 150 of 13 April 1983 on the Danish Foreign Service (as last amended by Act No. 410 of 6 June 2002), “[f]ees shall be charged for services rendered by the Foreign Service in accordance with rules laid down by the Minister for Foreign Affairs.” In accordance with this provision, the Minister for Foreign Affairs has issued Executive Order No. 1228 10 December 2009 (the [Executive Order on Payment for Services Provided by the Danish Foreign Service](#)). The ministry has also issued guidelines concerning the Executive Order.

The mentioned rules on payment apply to Danes as well as foreigners. **Liability to pay incurs from the moment services are requested, regardless of the outcome of the assistance provided. Prior to instigating its work, the embassy or consulate is obliged to inform the client that a service is subject to payment.** No payment is demanded in minor matters.¹⁶

The Executive Order on Payment for Services provided by the Ministry of Foreign Affairs includes three forms of payment: fees, hourly charges and outlays.

- A fee relates to a price set in advance for a certain service, irrespective of the time requirement for the performance of the service.
- An hourly charge means that the sum payable is dependent on the amount of time required to perform the service requested. The hourly charge is currently 800 DKK per working hour started.
- An outlay relates to the costs incurred by the Foreign Service in connection with a specific matter.

Some matters are exempted from payment:

- Child abduction.
- Evacuation.
- Cases relating to serious offences against Danish nationals abroad.
- Imprisonment.¹⁷

4.8. Case studies, in particular problematic practices

No information available.

5. Emergency travel document (ETD)

Danish diplomatic missions and general consulates are equipped with ETDs. An ETD can be issued to an unrepresented EU citizen upon authorization from the embassy of the relevant EU Member State.

6. Relevant diplomatic protection

No separate law on diplomatic protection exists.

¹⁶ All routine information tasks that may be handled on the basis of material to hand and within a space of half an hour should, as a general rule, be regarded as minor matters (public service).

¹⁷ This exception is not applicable, however, to imprisonment/detention in connection with the expiry of residence permit/visa period/legal residence period. Nor does the exception apply if the embassy or consulate provides ordinary assistance to the detainee, for example assistance to hold a wedding. In all these cases DKK 780 per hour or part thereof shall be charged.

7. Exercise of consular functions for expats

Danish diplomatic or consular missions provide advice and practical assistance. However, a Danish citizen, who is a permanent resident of another country, is generally referred to seek financial assistance from the country of residence.

8. Summary

Denmark provides consular assistance to Danish citizens abroad under the Foreign Service Act (*Lov om Udenrigstjenesten*), complemented by the Instructions on Consular Affairs and the Executive Order on payment for services provided by the Danish foreign services. No national consular law exists. Denmark is a party to the most important multilateral treaties on consular relations, and has concluded agreements with the other Nordic countries pertaining to cooperation in this field.

Assistance to EU citizens is provided according to Art. 23 TFEU. So far, some but not extensive practice exists.

The legal framework has not been extended by bilateral arrangements to cover the delegation of consular assistance or diplomatic protection according to Art. 23 TFEU, or to provide support for family members who are not nationals of a Member State.

9. List of important documents

International treaties and related national instruments

1.

Title: Wienerkonventionen af 24. april 1963 om konsulære forbindelser

Publication reference: BKI no 83 of 11/12/1972 (

Entry into force: 15.11.1972

English title: Vienna Convention on Consular Relations, Vienna, 24 April 1963

2.

Title: Wienerkonventionen af 24. april 1963 om konsulære forbindelser: Fakultativ protokol vedrørende erhvervelse af statsborgerskab

Publication reference: BKI no 83 of 11/12/1972

Entry into force: 15.11.1972

English title: Vienna Convention on Consular Relations Optional Protocol on the Acquisition of Nationality, Vienna, 24 April 1963

3.

Title: Wienerkonventionen af 24. april 1963 om konsulære forbindelser: Fakultativ protokol vedrørende tvungen bilæggelse af tvistigheder

Publication reference: BKI no 83 of 11/12/1972

Entry into force: 15.11.1972

English title: Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes, Vienna, 24 April 1963

4.

Title: Konsularkonvention af 27. juni 1962 med Det forenede Kongerige Storbritannien og Nordirland

Publication reference: BKI no 10 of 28/03/1963

Entry into force: 23.03.1963

English title: Consular Convention of 27 June 1962 between United Kingdom of Great Britain and Northern Ireland and Denmark

5.

Title: Samarbejdsoverenskomst af 23. Marts 1962 mellem Danmark, Finland, Island, Norge og Sverige (Helsingforsaftalen)

Publication reference: BKI no 38 of 26/07/1962

Entry into force: 01.07.1962

English title: Treaty of Cooperation between Denmark, Finland, Iceland, Norway and Sweden (the Helsinki Treaty)

Short summary: This Treaty was originally signed on 23 March 1962 and entered into force on 1 July 1962. The original text has been amended by Agreements that were signed on 13 February 1971, 11 March 1974, 15 June 1983, 6 May 1985, 21 August 1991, 18 March 1993, and 29 September 1995. The most recent amendments entered into force on 2 January 1996.

6.

Title: Nordisk konvention af 18. august 2003 med Finland, Island, Norge og Sverige om social sikring

Publication reference: BKI no 40 of 10/12/2004

Entry into force: 01.09.2004

English title: Nordic Convention on Social Security of 18 August 2003 between Denmark, Finland, Iceland, Norway and Sweden

[Circulars, internal guidelines](#)

7.

Title: Borgerserviceinstruksen

Publication reference: Not published (Updated on a regular basis)

English title: Instructions on Consular Affairs

8.

Title: Bekendtgørelse om betaling for tjenestehandlinger i udenrigstjenesten

Publication reference: BKI no 1228 of 10/12/2009

English title: Executive Order on Payment for Services Provided by the Danish Foreign Service

9.

Title: Vejledning til bekendtgørelse om betaling for tjenestehandlinger i udenrigstjenesten

Publication reference: VEJ no 3 of 23/01/2009

English title: Guidelines to the Executive Order on Payment for Services Provided by the Danish Foreign Service

[Websites, reports](#)

10.

Title: Udenrigsministeriet – Borgerservice

Publication reference: <http://www.um.dk/da/menu/Borgerservice/> (last visited: 7 December 2009)

English title: Ministry for Foreign Affairs – Consular Services

11.

Title: Udenrigsministeriets Årsrapporter 2002-2008

Publication reference:

<http://www.um.dk/da/servicemenu/Publikationer/OmUdenrigsministeriet/> (last visited: 7 December 2009)

English title: Annual Reports of the Ministry of Foreign Affairs 2002-2008



Estonia - Eesti (EE)

1. Introduction

The report contains the legal framework and national practice of Estonia on consular and diplomatic protection.

The report is based on international, European and national legal instruments, explanatory memoranda, publicly available information and materials provided by the Ministry of Foreign Affairs.

1.1. Terminology - National acronyms and definitions

RT (*Riigi Teataja*): Estonian State Gazette, available electronically (printed edition was cancelled from 1 June 2010).

2. Legal framework

Estonia's legal framework is based on multi- and bilateral treaties, European law, national law as well as State policy and practice.

2.1. International law

Estonia is a party to following general treaties:

- Vienna Convention on Consular Relations, entered into force for Estonia on 21 October 1991 (RT II 2006, 16), no reservations were made;
 - Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes, entered into force for Estonia on 21 October 1991 (RT II 2006, 16), no reservations were made;
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973, entered into force for Estonia on 21 October 1991 (RT II 2003, 18, 95), no reservations were made.

Estonia has concluded a trilateral agreement with Latvia and Lithuania in the field of consular protection before all three states became European Union Member States¹.

There are also **two bilateral agreements with Poland and Russia on consular matters²**. To notable extent, these agreements rewrite the articles of the Vienna Convention on Consular Relations. However, it also elaborates on these articles and makes choices in matters that are left open for the states to decide. The consular officers have the right to protect the interests of the sending State and its citizens.

¹ Agreement on consular assistance and co-operation between the Government of the Republic of Estonia, the Government of the Republic of Latvia and the Government of the Republic of Lithuania, Vilnius, 5 February 1999, in force since 23 September 1999, RT II 1999, 25, 147.

² Consular Convention between the Republic of Estonia and the Republic of Poland, Tallinn, 2 July 1992, in force 12 January 1997, RT II 1993, 9, 10; Consular convention between the Republic of Estonia and Russian Federation, Moscow, 2 December 1992, in force since 11 August 1995, RT II 1993, 29, 98.

2.2. Transposition of international law into national law

Under the Estonian Constitution (Section 3)³, **generally recognised principles and rules of international law are an inseparable part of the Estonian legal system**. Additionally, if laws or other legislation of Estonia are in conflict with international treaties ratified by the Parliament, the provisions of the international treaty shall apply (Section 123).

2.3. Implementation of European law into national law

Article 23 of the Treaty on the Functioning of the European Union is directly applicable. Section 53(1) of the 2009 Consular Act provides the **duty of all Estonian representations abroad** *“to protect the interests of a citizen of a Member State of the European Union if the Member State of the European Union where the person is a citizen does not have a representation in the receiving State and if the receiving State has no objections thereto.”* Paragraph two of the same section provides that: *“At the request of a Member State of the European Union, consular assistance shall be provided if a citizen of the country is in an emergency, has been detained or is serving sentence, also in the event of death or other unforeseeable and extraordinary circumstances.”*

Decision 95/553/EC and Decision 96/409/CSFP have been implemented in national law by the Consular Act.

2.4. National law

Estonian citizens have a constitutional right to receive both consular and diplomatic protection when abroad. The Estonian Constitution stipulates that *“everyone has the right to the protection of the State and of the law”* and *“the Estonian State shall also protect its citizens abroad”* (Section 13(1)). **The State has an obligation to provide consular protection notwithstanding the fact that there is no representation in the State where the citizen in need of consular protection is located at the moment**, or perhaps, there are no diplomatic or consular relations with that State in the first place. In these cases, the State has to find a solution using other channels or representations of other states.

Consular protection and assistance is provided under the **Consular Act (2009)**⁴. This act is elaborated and implemented by several regulations of the Minister of Foreign Affairs, two especially relevant in this context being the **regulation establishing the Procedure for Providing or Refunding Financial Assistance and the Format of the Corresponding Applications**⁵ and the **regulation establishing the Conditions and Procedure for Sealing Urns and Coffins and the Format of the Certificate**⁶.

Consular Act has seven chapters and wide range of issues consular service. The first chapter establishes the general conditions and principles (consular functions, district, paten etc). The second and third chapters provide general requirements, training and other administrative matters regarding both consular officers or honorary consuls. The fourth chapter lays rules for the provision of Consular Services (forwarding documents, organising voting, translation services, issuance of visas etc). The fifth chapter is about the provision of Consular Assistance (discussed below). The sixth chapter examines the

³ RT I 2007, 43, 311.

⁴ RT I 2009, 29, 175 [...] 2009, 62, 405.

⁵ RTL 2009, 49, 725.

⁶ RTL 2009, 49, 720.

consular functions of structural units of Ministry of Foreign Affairs located in Estonia. The seventh chapter contains number of implementing provisions.

Consular officers have certain discretion when providing consular services depending on, for example, officer's qualification or knowledge of language. Regarding consular assistance, discretion is very limited and concerns the provision of financial assistance (discussed below).

There is no special appeal procedure against a refusal to provide consular protection, but general Administrative Procedure Act⁷ applies to administrative proceedings prescribed in the Consular Act, taking account of its specifications.⁸ A person who finds that his rights are violated by an administrative act or in the course of administrative proceedings may file a challenge under Administrative Procedure Act.

If the person was refused consular protection, he should be able to contest the relevant decision with the consular post or bring the issue before the Minister of Foreign Affairs who exercises over administrative acts of the consular post. If the challenge is not successful and the person still thinks that his rights were violated, he may take the matter to an administrative court in Estonia. The decision by a consular officer to provide or to refuse to provide financial assistance without security or the decision by the Minister of Foreign Affairs to release a person from the refunding obligation or to reduce the sum to be refunded cannot be contested in a court.⁹

For consuls and diplomats, the **Ministry of Foreign Affairs has adopted internal guidelines that are not publicly available.**

2.5. Documentation of consular protection

The *Baltic Yearbook of International Law* has a part called "Republic of Estonia Materials on International Law" that includes also a special section on diplomatic and consular protection.

2.6. Information to citizens on consular protection

For Estonian citizens, the website of the Ministry of Foreign Affairs provides information and instructions on how to act if assistance is needed while abroad¹⁰.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Estonian bilateral agreements with third countries do not include provisions protecting European Union citizens working and living in third countries.

Estonia has not informed third countries about the practice of extending protection to Union citizens under Article 8 of the Vienna Convention on Consular Relations.

Estonian bilateral agreements with third countries do not include provisions extending consular protection to European Union citizen's family members who are not citizens of a Member State.

Generally, Estonia does not extend consular protection to a European Union citizen's family members of who are not citizens of a Member State. However, exceptions have

⁷ RT I 2001, 58, 354 [...] 2009, 27, 164.

⁸ Consular Act, Section 1(4).

⁹ Consular Act, Section 64(7).

¹⁰ www.mfa.ee/?q=et/taxonomy/term/128

been made under special circumstances¹¹. Estonia has not informed third countries of this practice.

Estonia has not started negotiations concerning agreements with third countries that include provisions protecting European Union citizens working and living in third countries.

Estonia has not started negotiations concerning agreements with third countries that include provisions extending consular protection to a European Union citizen's family members of who are not citizens of a Member State.

3.2. Statistical data on consular practice

Estonia provides consular protection foremost to its citizens, but in case of need, assistance has been provided also to European Union citizens. Statistical data on the number of reported cases of consular protection offered in third countries¹²:

2009:

Total: 512

Emergency situations (accident, death, illness, victims of crime): 146

Financial aid: 84

Life threatening situations: 11

Legal protection (protection of the interests of minors or persons with restricted active legal capacity and persons being arrested, detained or serving sentence): 269

To European Union citizens: 2

2008:

Total: 656

Emergency situations (accident, death, illness, victims of crime): 168

Financial aid: 99

Life threatening situations: 141

Legal protection (protection of the interests of minors or persons with restricted active legal capacity and persons being arrested, detained or serving sentence): 233

To European Union citizens: 15

2007:

Total: 484

Emergency situations (accident, death, illness, victims of crime): 155

Financial aid: 114

Life threatening situations: 0

Legal protection (protection of the interests of minors or persons with restricted active legal capacity and persons being arrested, detained or serving sentence): 215

To European Union citizens: 9

¹¹ During the armed conflict in Georgia (August 2008), Estonia organised a special flight from Yerevan to Tallinn and in addition to Estonian and other European Union citizens, 17 citizens of third countries who had European Union residents cards or, in case of some, Schengen visas, were evacuated.

¹² Data taken from the Yearbook of the Ministry of Foreign Affairs 2006, 2007, 2008/2009 and 2010.

2006:

Total: 440

Emergency situations (accident, death, illness, victims of crime): 134

Financial aid: 95

Life threatening situations: 0

Legal protection (protection of the interests of minors or persons with restricted active legal capacity and persons being arrested, detained or serving sentence): 211

To European Union citizens: 0

Estonia has not experienced particular problems when providing assistance to European Union citizens.

4. Consular protection in detail

Estonia has 47 diplomatic missions or consular post and 131 honorary consuls.

Estonia's legal framework is based on multi- and bilateral treaties, European law, national law as well as State policy and practice. International and European obligations are elaborated in the Consular Act that establishes the general rules on providing consular protection.

Consular assistance is provided to European Union citizen if the latter does not have a representation in the receiving State and is in distress, detained or serving a sentence, if he or she dies or if any other unforeseeable or extraordinary circumstances arise¹³.

There is no national case law on consular protection.

4.1. Right to consular protection

Estonian citizens have a constitutional right to receive protection from the State when abroad, including consular protection. The latter is provided also to European Union citizen. Additionally, **the Consular Act extends limited consular protection to non-citizens who live in Estonia on the basis of a residence permit or right of residence and to whom an Estonian alien's passport has been issued under the Identity Documents Act¹⁴.** As a rule, such aliens are State-less persons permanently living in Estonia, but under exceptional circumstances an alien's passport may be issued also to a foreigner. The Identity Documents Act¹⁵ emphasizes that an alien's passport does not grant the holder the right to the protection of a foreign mission of Estonia unless otherwise provided by law or an international agreement¹⁶. The Consular Act speaks explicitly of only one form of consular assistance provided to aliens, namely the issue of permit of return (discussed below).

4.2. Assistance in cases of death

The consular officer or honorary consul gives immediate notification of the death of an Estonian citizen to the Ministry of Foreign Affairs, which notifies the person's family or other close persons.

The consular officer or honorary consul assists person's family or other close persons with different formalities concerning the identification, burial or repatriation

¹³ Consular Act, Section 53.

¹⁴ Consular Act, Section 1(2).

¹⁵ RT I 1999, 25, 365 [...] 2009, 62, 405.

¹⁶ Identity Documents Act, Section 26(2).

of the mortal remains, e.g., issuing necessary documents, sealing the urn or coffin, helping to obtain a death certificate, but **all expenses are covered by the person's family or other close persons.**

4.3. Assistance in cases of serious accident or serious illness

The consular officer or honorary consul gives immediate notification regarding any case of serious injury to or illness of an Estonian citizen to the Ministry of Foreign Affairs that notifies the person's family or other close persons. If the injured or sick person has to be brought to Estonia due to his condition, the consular officer provides consultation and assistance to the person's family or other close persons in organising the person's travel to Estonia. **The consular post or Estonian Health Insurance Fund does not cover the medical or travel costs.**

4.4. Assistance in cases of arrest or detention

If an Estonian citizen is detained or is serving a sentence in a consular district, the consular officer or honorary consul meets him/her upon a reasoned request from the citizen or his/her authorised representative, family or other close persons. The citizen in question may be represented by the consular officer or honorary consul when dealing with the authorities of the consular district at the request of the citizen and in justified cases. **However, neither consular officer nor honorary consul provides legal aid** because they are not required to be experts in the law of the receiving State. They also do not arrange the appeal documents, search information on the access to education etc. **The citizen must cover expenses on legal aid, translations and other services.** The Ministry of Foreign Affairs makes regular inquiries to the states where Estonian citizens are serving sentences.

4.5. Assistance to victims of violent crime

The consular officer or honorary consul **assists** an Estonian citizen who has fallen victim to a crime **in finding medical and legal assistance.** If necessary, the consular officer organises communication between the citizen and law enforcement authorities of the receiving State. Neither consular officer nor honorary consul provides legal aid as they are not required to be experts in the law of the receiving State. **The citizen must cover expenses** on legal aid, translations and other services.

4.6. Relief and repatriation of distressed citizens

The Estonian diplomatic mission or consular post contacts local authorities in order to provide assistance to citizens if they have been involved. Citizens are furthermore encouraged to contact a diplomatic mission or consular post or directly the Ministry of Foreign Affairs by themselves in order to inform the authorities of their needs. They are also informed of the possibility to seek assistance from the diplomatic or consular authorities of other Member States. **Estonian authorities try to maintain a contact with a citizen and if necessary, help the citizen to leave the area or organise an evacuation.**

Estonian experience in times of crises is mostly limited to two cases, namely the tsunami in South East Asia (December 2004) and the armed conflict in Georgia (August 2008). The cooperation with other Member States was good.

4.6.1. Natural disasters

In case of the **tsunami** in South East Asia, Estonian citizens were asked to contact either the Ministry of Foreign Affairs or diplomatic or consular authorities of other Member States. In the end, Estonian citizens were evacuated by the flights organised by other Member States.

It was reported that there was one Estonian citizen in **Haiti** when the earthquake stroke. The individual worked as a security official for the United Nations and received assistance also from other channels. However, the Ministry of Foreign Affairs forwarded the individual's information to the Haiti situation hotline number set up by the United Nations and was in constant contact with citizen's close relatives. The Ministry of Foreign Affairs was in touch with its partners in the European Union that were working to organise the evacuation of citizens. The Estonian honorary consul in the Dominican Republic was informed of and kept updated on the situation.

4.6.2. Terrorist acts

Diplomatic missions, consular posts or honorary consuls provide assistance to citizens affected by terrorist acts.

No specific practice yet.

4.6.3. Pandemics

Diplomatic missions, consular posts or honorary consuls provide assistance to citizens affected by pandemics.

No specific practice yet.

4.6.4. Military conflicts

In case of the conflict in **Georgia**, Estonian citizens were asked to contact the diplomatic mission or directly the Ministry of Foreign Affairs. **Estonia organised a special flight** from Yerevan to Tallinn and in addition to Estonian citizens, 30 citizens of other Member States and third countries were evacuated (12 Georgians with European Union resident cards or Schengen visas, 8 Finnish citizens, 3 Ukrainians with European Union resident cards, 2 British citizens, 2 United States citizens, 2 Russians with European Union resident card and 1 Danish citizen). **No reimbursement of costs was required from either the persons or relevant states.** In addition, Poland evacuated 7 Estonian citizens from Georgia to Warsaw and Lithuania evacuated 6 Estonian citizens from Georgia to Vilnius.

4.6.5. Financial advances

The consular officer or honorary consul organises the provision of assistance on the basis of a written application from a person in distress on the condition that the person provides sufficient security. If a person in distress fails to provide security, the consular officer may provide financial assistance on the basis of a reasoned application from the person and after consulting with the Ministry of Foreign Affairs. The money must, normally, be refunded within ninety days from the date of its receipt. If a person fails to refund the money, the Minister of Foreign Affairs issues a precept ordering the person to refund the money. The relevant precept is subject to compulsory execution. On the basis of a reasoned application, **the Minister of Foreign Affairs may release a person from the obligation to refund money** or reduce the sum to be refunded.

The **consular officer may refuse to provide financial assistance** if the applicant:

- (a) has knowingly submitted false or distorted information or has knowingly concealed information
- (b) has previously received financial assistance without just cause
- (c) has failed to use previous financial assistance for its intended purpose
- (d) has failed to refund previous financial assistance

Financial assistance is provided to European Union citizens only with the permission of the competent authority of the relevant Member State.

4.7. Reimbursement of the assisting State

Generally, the assistance with man-power is considered as administrative assistance and reimbursement is not required. However, the person who receives assistance is expected to pay for some specific services (fee may be reduced or waived fully), e.g., issuance of a certificate in proof of sealing of coffin or urn containing remains of person¹⁷. As mentioned above, the person has to refund the financial advances and cover other related expenses, e.g., for travelling, legal assistance, repatriating the remains. No reimbursement has been required in case of exceptional situations, e.g., the citizens evacuated from Georgia during the armed conflict in August 2008 were not asked to reimburse the costs.

The same policy is more or less followed in case of assisting European Union citizens. The reimbursement obligation is recorded and a special document is forwarded by the Ministry of Foreign Affairs to the competent authority of the relevant Member State. Estonia does not demand reimbursement directly from the citizen who actually received consular assistance, including financial advances. Estonia expects reimbursement and does not waive the reimbursement, although again in case of the evacuation from Georgia in August 2008 no reimbursement was demanded.

5. Emergency travel documents (ETD)

The consular officer or honorary consul issues a certificate of return to an Estonian citizen pursuant to the Identity Documents Act. This certificate allows the citizen to return to Estonia, but not to continue his journey according to the original plan. A similar permit of return is issued to an alien (having permanent residence in Estonian and holding alien's passport) in exceptional cases and on the condition that the person can be identified in the foreign State.

Assistance to both Estonian and unrepresented European Union citizens has been provided when needed. Generally, the practice has been problem free. However, a representation of one Member State refused once to issue an Emergency Travel Document to an Estonian citizen claiming that such assistance is provided to its own citizens only.

During the years 2005–2007, emergency travel documents were issued to 13 Latvian citizens by Estonian representations.

6. Diplomatic protection

Estonian citizens have a constitutional right to receive protection from the State when abroad, including diplomatic protection.

No practice yet.

¹⁷ State Fees Act (RT I 2006, 58, 439 [...] 2009, 69, 464), Section 271.

7. Exercise of consular functions for expats

It is difficult to know how many Estonian citizens are living abroad because they are not obliged to register permanent residence abroad. For the European Parliament elections in 2009, 38.501 voter's cards were sent to those who have given notice of their permanent residence abroad (this does not include minors). However, the Ministry of Foreign Affairs advises that the citizens and aliens (having permanent residence in Estonian and holding an alien's passport) who reside permanently in a foreign State should register themselves with the Ministry, consular officer or honorary consul.¹⁸ The purpose of such a registration is to inform the Population Register and, therefore, to ensure that the State can guarantee the rights and provide the services which depend on correct up-to-date contact information (participation in elections, payment of taxes etc).

Regarding consular services and assistance, the **Consular Act does not differentiate between citizens temporarily or permanently in a foreign State.** Nevertheless, certain services are more likely used by the citizens having permanent residence in the foreign State (participation in elections and referenda, regular application for different document etc).

The Ministry of Foreign Affairs sometimes organises "temporary consular missions" to States without permanent Estonian diplomatic missions or consular posts in order to provide consular services both to Estonian and local citizens (latest mission takes place from June to August in Kazakhstan).

8. Summary

Estonia is a party to the most important multilateral treaties on consular relations, it has concluded some bi- and trilateral agreements on consular matters and has enacted national legal instruments to elaborate and implement its international obligations. The main instrument is the Consular Act and its implementation regulations.

Assistance to European Union citizens is provided pursuant to Article 23 of the Treaty on the Functioning of the European Union. As a rule, consular protection is not extended to family members who are not citizens of a Member State.

Estonian practice in terms of providing consular protection to other European Union citizens is limited, but it is generally problem-free.

9. List of important documents

International treaties and related national instruments

1.

Title: Konsulaarsuhete Viini konventsioon

Publication reference: RT II 2006, 16

Entry into force: 21 October 1991

English title: Vienna Convention on Consular Relations

2.

Title: Konsulaarsuhete Viini konventsiooni vaidluste kohustusliku lahendamise fakultatiivne protokoll

Publication reference: RT II 2006, 16

Entry into force: 21 October 1991

¹⁸ Procedure for the Registration of Information regarding an Estonian Citizen or an Alien Staying Temporarily or Residing Permanently in a Foreign State and the Forms of Registration Applications, RTL 2009, 49, 719.

English title: Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes

3.

Title: Eesti Vabariigi ja Poola Vabariigi vaheline konsulaarkonventsioon

Publication reference: RT II 1993, 9, 10

Entry into force: 12 January 1997

English title: Consular Convention between the Republic of Estonia and the Republic of Poland

Short summary: General agreement on exercising consular function in respective states

4.

Title: Eesti Vabariigi ja Vene Föderatsiooni vaheline konsulaarkonventsioon

Publication reference: RT II 1993, 29, 98

Entry into force: 11 August 1995

English title: Consular Convention between the Republic of Estonia and Russian Federation

Short summary: General agreement on exercising consular function in respective states

5.

Title: Eesti Vabariigi valitsuse, Läti Vabariigi valitsuse ja Leedu Vabariigi valitsuse vaheline konsulaarabi ja koostöö kokkulepe

Publication reference: RT II 1999, 25, 147

Entry into force: 23 September 1999

English title: Agreement on Consular Assistance and Cooperation between the Government of the Republic of Estonia, the Government of the Republic of Latvia and the Government of the Republic of Lithuania

Short summary: Agreement on providing consular protection to unrepresented citizens of the parties

National legal instruments

6.

Title: Konsulaarseadus

Publication reference: RT I 2009, 29, 175 ... 2009, 62, 405

Entry into force: 1 July 2009

English title: Consular Act

Short summary: General act for regulating the functioning of consular authorities and providing consular services and assistance, also implementing relevant international and European law

7.

Title: Urni või kirstu pitseerimise taotlemise tingimused, kord ja tõendi vorm

Publication reference: RTL 2009, 49, 720

Entry into force: 1 July 2009

English title: Conditions and Procedure for Sealing Urns and Coffins and the Format of the Certificate

Short summary: Regulations adopted under the Consular Act by the Minister of Foreign Affairs

8.

Title: Rahalise abi andmise ja tagastamise kord ning tagatiseta rahalise abi taotluse vorm

Publication reference: RTL 2009, 49, 725

Entry into force: 1 July 2009

English title: Providing or Refunding Financial Assistance and the Format of the Corresponding Applications

Short summary: Regulations adopted under the Consular Act by the Minister of Foreign Affairs

9.

Title: Välisriigis ajutiselt viibiva või püsivalt elava Eesti kodaniku või välismaalase andmete registreerimise kord ja registreerimistaotluse vormid

Publication reference: RTL 2009, 49, 719

Entry into force: 1 July 2009

English title: Procedure for the Registration of Information regarding an Estonian Citizen or an Alien Staying Temporarily or Residing Permanently in a Foreign State and the Forms of Registration Applications

Short summary: Regulations adopted under the Consular Act by the Minister of Foreign Affairs

10.

Title: Isikut tõendavate dokumentide seadus

Publication reference: RT I 1999, 25, 365 ... 2009, 62, 405

Entry into force: 1 January 2000

English title: Identity Documents Act

Short summary: Identifies, in conjunction with the Consular act, the non-citizens permanently resident in Estonia who may receive consular assistance

Websites

11.

Title: Välisministeerium: Kui vajad võõrsil abi

Publication reference: www.vm.ee/?q=et/taxonomy/term/128

English title: Ministry of Foreign Affairs: If you need help abroad

Short summary: Only available in Estonian. Provides information on what consular assistance is available while abroad and who to contact if help is needed

12.

Title: Välisministeeriumi aastaraamat 2006

Publication reference: www.vm.ee/?q=et/node/4119

Entry into force:

English title: Yearbook of the Ministry of Foreign Affairs 2006

Short summary: Also available in English, but the statistics on consular assistance is provided only in Estonian edition

13.

Title: Välisministeeriumi aastaraamat 2007

Publication reference: www.vm.ee/?q=et/node/4118

English title: Yearbook of the Ministry of Foreign Affairs 2007

Short summary: Also available in English, but the statistics on consular assistance is provided only in Estonian edition

14.

Title: Välisministeeriumi aastaraamat 2008/2009

Publication reference: www.vm.ee/?q=et/node/8427

English title: Yearbook of the Ministry of Foreign Affairs 2008/2009

Short summary: Also available in English, but the statistics on consular assistance is provided only in Estonian edition

15.

Title: Välisministeeriumi aastaraamat 2010

Publication reference: www.vm.ee/?q=et/node/9222

English title: Yearbook of the Ministry of Foreign Affairs 2010

Short summary: Also available in English, but the statistics on consular assistance is provided only in Estonian edition



Finland - Suomi (FI)

1. Introduction

This Report explains the legal framework of Finland on consular and diplomatic protection as of 1 June 2010.

1.1. Terminology - National acronyms and definitions

Consular services: for the purpose of the [Finnish Consular Services Act](#) “consular services” mean such consular functions set forth in Article 5 of the Vienna Convention on Consular Relations as may be exercised by a diplomatic mission or consular post that is part of the Finnish foreign service, for the purpose of providing assistance to individual persons or legal persons or to protect their interests, and the provision of which under this Act fall within the functions of the foreign affairs administration, unless the service in question is subject to other provisions or orders (*Section 1*).

2. Legal framework

Finland’s legal framework in the area of consular services consists of multilateral treaties, bilateral treaties, obligations under EU law and national legislation. The following report will concentrate on introducing Finland’s national legislation pertaining to consular protection. In addition to that, a Nordic cooperation agreement will be briefly touched upon.

2.1. International law

Finland is a party to the following **multilateral** conventions:

- Vienna Convention on Consular Relations. Ratification on 2 July 1980; in force since 1 August 1980. (Finnish Treaty Series; FTS 50/1980). One reservation and one declaration.
 - Optional Protocol concerning the Compulsory Settlement of Disputes.
 - Optional Protocol concerning Acquisition of Nationality.
- Vienna Convention on Diplomatic Relations. Ratification on 9 December 1969; in force since 8 January 1970. (FTS 3/1970). No reservations.
 - Optional Protocol concerning Acquisition of Nationality.
 - Optional Protocol concerning the Compulsory Settlement of Disputes.
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973. Ratification on 14 February 1989, in force since 15 March 1989. (FST 13/1989). No reservations.
- Agreement concerning the co-operation between Denmark, Finland, Iceland, Norway and Sweden (Helsinki, 23 March 1962). Ratification on 29 June 1962; in force since 1 July 1962. (FTS 28/1962). No reservations.

In addition, Finland has concluded several multilateral and **bilateral** treaties containing provisions on consular functions and consular protection. These include the bilateral Consular Conventions with Romania (FTS 18/1973), Poland (FTS 45/1972), Hungary

(FTS 40/1972) and Russia (FTS 32/1966), as well as the Treaty of Friendship, Commerce and Consular Rights between Finland and the United States of America (FTS 25/1934), for instance.

2.2. *Transposition of international law into national law*

Finnish system for transposition and implementation of international law is based on **dualistic system**. This means that in the Finnish system, acceptance of international obligations and applicability in the national legal system are established in separate stages. The legal foundation is in the Constitution of Finland (731/1999).

The foreign policy of Finland is directed by the President of the Republic in co-operation with the Government. However, the Parliament accepts Finland's international obligations and their denouncement and decides on the bringing into force of Finland's international obligations in so far as provided in this Constitution (*Section 93*).

The acceptance of the Parliament is required for such treaties and other international obligations that contain provisions of a legislative nature, are otherwise significant, or otherwise require approval by the Parliament under the Constitution (*Section 94*).

The provisions of treaties and other international obligations, in so far as they are of a legislative nature, become directly applicable by an Act. Otherwise, international obligations are entered into force by a Decree issued by the President of the Republic. A Government bill for entering into force of an international obligation is considered in accordance with the ordinary legislative procedure for an act. However, if the proposal concerns the Constitution or a change to the national territory, the Parliament shall adopt it with at least two thirds of the votes cast. An Act may state that the entry into force of an international obligation is affected by a Decree. General provisions on the publication of treaties and other international obligations are laid down by an Act (*Section 95*).

2.3. *Implementation of European law into national law*

According to the Constitution of Finland, the Government is responsible for the national preparation of the decisions to be made in the European Union and decides on the concomitant Finnish measures, unless the decision requires the approval of the Parliament. The Parliament participates in the national preparation of decisions to be made in the European Union, as provided in the Constitution. The communication of important foreign policy positions to foreign States and international organisations is the responsibility of the Minister with competence in foreign affairs. (*Section 93*)

The acceptance of the Parliament is required for such treaties and other international obligations that contain provisions of a legislative nature, are otherwise significant, or otherwise require approval by the Parliament under the Constitution. The acceptance of the Parliament is required also for the denouncement of such obligations. A decision concerning the acceptance of an international obligation or the denouncement of it is made by a majority of the votes cast. However, if the proposal concerns the Constitution or an alteration of the national borders, the decision shall be made by at least two thirds of the votes cast. An international obligation shall not endanger the democratic foundations of the Constitution. (*Section 94*)

The provisions of treaties and other international obligations, in so far as they are of a legislative nature, are brought into force by an Act. Otherwise, international obligations are brought into force by a Decree issued by the President of the Republic. A Government bill for the bringing into force of an international obligation is considered in accordance with the ordinary legislative procedure pertaining to an Act. However, if

the proposal concerns the Constitution or a change to the national territory, the Parliament shall adopt it, without leaving it in abeyance, by a decision supported by at least two thirds of the votes cast. An Act may state that for the bringing into force of an international obligation its entry into force is provided by a Decree. General provisions on the publication of treaties and other international obligations are laid down by an Act. (*Section 95*)

The Parliament considers those proposals for acts, agreements and other measures which are to be decided in the European Union and which otherwise, according to the Constitution, would fall within the competence of the Parliament. The Government shall, for the determination of the position of the Parliament, communicate a proposal to the Parliament by a communication of the Government, without delay, after receiving notice of the proposal. The proposal is considered in the Grand Committee and ordinarily in one or more of the other Committees that issue statements to the Grand Committee. However, the Foreign Affairs Committee considers a proposal pertaining to foreign and security policy. Where necessary, the Grand Committee or the Foreign Affairs Committee may issue to the Government a statement on the proposal. In addition, the Speaker's Council may decide that the matter be taken up for debate in plenary session, during which, however, no decision is made by the Parliament. The Government shall provide the appropriate Committees with information on the consideration of the matter in the European Union. The Grand Committee or the Foreign Affairs Committee shall also be informed of the position of the Government on the matter. (*Section 96*)

According to Section 2 of the [Consular Services Act](#), the right of the citizens of the European Union to obtain services from the diplomatic or consular authorities of any Member State are contained in Article 8C of the Treaty establishing the European Community (now: Article 23 TFEU).

2.4. National Law

Finland has a [Consular Services Act](#) (No 498), adopted on 22 April 1999.

There are only few cases concerning the consular services in Finland.

According to Supreme Administrative Court's precedent KHO:2007:23 it is not in the court's jurisdiction to try appellant's demand concerning financial assistance under Consular Services Act.

According to Supreme Court's precedent KKO:1940-II-88 a consul has no competence to give information about customs duty because consul is not subject to official liability concerning these matters.

In a complaint to the Parliamentary Ombudsman, a case of death concerning an alien who lived abroad was reported.

The complainant criticized proceedings of Finnish authorities because they did not report about the death of complainant's father living abroad to his children in Finland. The sister of the deceased father visited the Finnish embassy and she informed them about her brother's death and that his children in Finland whom she did not know should be informed. The complainant also criticized actions of local register office which did not answer to the letter of the Finnish embassy asking for reporting the death of complainant's father to the children living in Finland. As the Finnish authorities do not have an obligation to report the death, the Ombudsman did not find any misbehaviour in the proceedings of Ministry of Foreign Affairs or of the local register office. However, the Ombudsman pointed out that the local register office should answer to letters properly without undue delay and should provide requested assistance to another authority according to principles of good administration authority.

2.5. Information to citizens on consular protection

The website of the Ministry of Foreign Affairs for Finland¹ provides complete information about the country's consular services.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Statistical data on consular practice

According to Ministry of Foreign Affairs for Finland in **2009** there were 198 EU-citizen and citizens from Nordic countries who obtained services from Finnish consular authorities.

As to assistance in cases of emergency, the following figures are reported: 373 events of death, 161 events of arrest and detention, 1535 victims of criminal offence, 357 events of illnesses and 61 cases of financial assistance.

4. Consular protection in detail

In September 2009, Finland had 86 diplomatic missions and 12 consular missions. After that, one more diplomatic mission has been established, in Astana, Kazakhstan in late 2009. **Approximately one fourth of the work of the Finnish missions is spent on providing various services to citizens.**

Pursuant to *Section 4* of the [Consular Services Act](#), *“the Ministry for Foreign Affairs and the missions shall in general monitor the observance abroad of the interests and rights of natural and legal persons ... [to whom the Act is applicable; see below] taking into account internationally recognised human rights and other international obligations”*.

Furthermore, *“where possible, the Ministry for Foreign Affairs and the missions give general advice to natural and legal persons ... [to whom the Act is applicable; see below] on any special conditions prevalent in their respective consular districts and on questions relating to the consideration, by an authority of a foreign State, of a matter concerning rights and interests”*. (Section 5)

Section 6 establishes general constraints on consular services: *“When providing consular services, the Ministry for Foreign Affairs and the missions shall conform to the laws and regulations of the consular district where the mission is located and to the rules of public international law and international agreements binding on Finland”*. Moreover, *“the Ministry for Foreign Affairs, the mission or a person belonging to the staff of either may not act as a counsel or legal representative or as a legal adviser for a person applying for a consular service”*.

Section 7 stresses the **primacy of advice** by providing, *inter alia*, that *“before any other measures referred to in this Act are taken, a person applying for a consular service shall be advised and given guidance on how to proceed with his or her matter”*. **Other measures resorted to by missions and the Ministry of Foreign Affairs are meant to be merely a last resort:** they *“may be taken only when there are no other means available to the applicant for proceeding with his or her matter”*.

4.1. Right to consular (and diplomatic) protection

The right to consular protection is established in Section 2 of the [Consular Services Act](#). Pursuant to this provision, *“consular services [...] may be provided for a Finnish*

¹ www.formin.finland.fi

legal person or a Finnish citizen or for a foreign citizen residing permanently in Finland, who is in possession of or has been granted a permit to reside or work in Finland either permanently or in a comparable manner.” “Under special circumstances consular services [...] may also be provided for other foreign citizens”.

Furthermore, *“provisions concerning services provided for citizens of Nordic Countries are contained in Article 34 of the Treaty of Cooperation signed by Denmark, Finland, Iceland, Norway and Sweden (FTS 28/1962)”*. Pursuant to this Agreement made in 1962 a Finnish citizen in distress outside the Nordic states can turn for assistance to the mission of any other Nordic country if there is no Finnish mission available on site. Missions of the other Nordic states assist Finnish citizens in most cases in a similar manner as Finnish missions would do, with the exception of issuing passports. The Nordic countries have adopted specific guidelines on the application of the Agreement. Pursuant to these guidelines, the Nordic consular cooperation under the Agreement must include as a minimum, *inter alia*, assistance for persons (Nordic citizens) in distress and their repatriation; assistance for persons deprived of their liberty or accused of an offence; assistance in the case of death; financial assistance; and cooperation in crisis situations for evacuation of persons, for instance.

4.2. Assistance in cases of death

Once a mission has been informed of the death of a person, it reports the case of death to the Ministry for Foreign Affairs. The Ministry relays the information to “the next of kin or other close person, whose identity and whereabouts can without unreasonable difficulties be ascertained”. (*Section 23*)

If needed, the mission assists in “arranging the burial or cremation of the deceased or the transport of the remains of the deceased to Finland on the request of the next of kin”. However, “if the next of kin does not assume responsibility for the burial or cremation of the deceased or for the transport of the remains of the deceased to Finland, the mission shall contact the local authorities for the purpose of arranging the burial or cremation of the deceased in accordance with local practice”. (*Section 24*)

Furthermore, “on the request of the next of kin, the mission shall assist in requesting information on the cause of death of the deceased, if it is in no other way possible to obtain such information”. (*Section 25*)

If the deceased does not have an insurance covering the costs of such arrangements, the next-of-kin are responsible for all the costs.

4.3. Assistance for persons in distress

The following consular services can be afforded to a person “temporarily residing abroad within a consular district and who the mission has found to be **in distress because of illness, injury, accident, crime or other comparable reason**”. (*Section 11*)

First of all, a mission will, if needed, “**advise and assist** a person in distress [...] to contact the next of kin or other person, to receive hospital treatment, to arrange repatriation to Finland, to obtain legal assistance, to report an offence and to obtain any other necessary help required by the situation”. (*Section 12.1*)

If the distress is “caused by the fact that the person in question has been subjected to illegal deprivation of liberty, the mission shall also inform the competent authority of the State in question and the competent Finnish authority, provide necessary assistance in the transmission of information between the competent authorities and the person subjected to illegal deprivation of liberty, assist in necessary contacts between the

person in question and his or her next of kin and observe how the matter proceeds before the authority of the State in question”. (*Section 12.2*)

“Upon application”, a mission can “transfer funds against an advance deposit made in a bank account of the Ministry for Foreign Affairs or provide financial assistance to a distressed person within the limits of funds reserved for this purpose, when the mission has found that the person in question is, without the help of the mission, unable to obtain sufficient funds to alleviate immediate distress”. (*Section 13.1*)

The different types of financial assistance that a mission may provide are the following:

- “1) a small amount of financial assistance to alleviate immediate distress;
- 2) financial assistance for repatriation, against a signed undertaking to repay the sum, if it is not possible to obtain an advance deposit; or
- 3) financial assistance for repatriation or necessary and temporary treatment of an illness, if it is not possible to obtain an advance deposit and it is not possible for the distressed person to sign an undertaking to repay because of a serious illness or other comparable reason”. (*Section 13.2*)

“The value of the small amount of financial assistance shall be deducted from any further funds that the mission may transmit, or it shall be added to a possible undertaking to repay.” (*Section 13.3*)

Financial assistance is, however, always discretionary. The Act lists several explicit grounds on which a mission may refuse such assistance:

- “1) the applicant has, when applying for assistance, knowingly given incorrect information on his or her identity or other incorrect information affecting the decision, or has concealed a fact that might have affected the contents of the decision;
- 2) the applicant has earlier received financial assistance from the mission unjustifiably, by having knowingly given incorrect information on his or her identity or other incorrect information that has affected the decision, or has concealed facts that have affected the contents of the decision;
- 3) the applicant has used earlier financial assistance for purposes other than those for which the assistance has been granted; or
- 4) the applicant has not repaid earlier granted assistance”. (*Section 14*)

4.4. Assistance for persons deprived of their liberty and for persons accused of an offence

“If, in the consular district of the mission, a person [...] who has been arrested, detained or in some other way deprived of his or her liberty [...] so requests, the mission shall contact him or her without delay”. (*Section 19.1*)

If the person so requests, “his or her next of kin or other named person shall be informed of the deprivation of liberty, he or she shall be visited to the extent possible and, where necessary, be assisted to obtain a counsel and other legal assistance based on the local legislation and to obtain an interpreter”. (*Section 19.2*)

Furthermore, “during the deprivation of liberty the mission shall be in contact with the person [...] as necessary and in accordance with the local conditions. The mission shall observe the treatment of the person [...] and how the matter proceeds before the authority of the foreign State. The mission may, if considered necessary, assist the person [...] on his or her request, to apply for pardon or early release or for a postponement of the enforcement of a prison sentence”. (*Section 20*)

“The mission may transmit funds to a person deprived of his or her liberty, against advance deposit in a bank account of the Ministry for Foreign Affairs, for the payment of a fine or bail ordered as a condition for release”. (*Section 21*)

Finally, in case if a person accused of an offence has not been deprived of his or her liberty, “the mission shall assist the accused on his or her request, when necessary, in obtaining a counsel and other legal assistance based on the local legislation and in obtaining an interpreter, and shall be in contact with the accused when necessary”. (*Section 22*)

On the basis of a separate agreement, extradition may be possible.

4.5. Assistance in crises

“In the case of a **major accident, natural disaster, environmental accident, war, civil war or other crisis situation or under the threat of such a situation** the mission” assists persons “residing within the consular district of the mission, in order to ensure their personal safety”. (*Section 15*)

The mission may also assist “in arranging the evacuation of a person from a crisis area to the closest safe area or to his or her home country, when this is necessary to ensure the personal safety of the person in question”. Such an evacuation for repatriation can only be arranged with the consent of the person in question. (*Section 16*)

Factors to be taken into account in the provision of assistance include “the crisis situation, other circumstances, any measures taken by other Nordic Countries or Member States of the European Union and the actual capability of the mission to provide assistance”. (*Section 17*)

Finally, “wherever possible” the mission must “provide assistance in a crisis situation or under the threat of such a situation for the purpose of maintaining contacts between the person in question and his or her next of kin residing in his or her home country”. The mission transmits information to the Ministry for Foreign Affairs on persons residing in the crisis area, and on the development of the crisis situation. (*Section 18*)

4.6. Relief and repatriation of distressed citizens

The relief and repatriation of distressed citizens of the Union is done by the provisions of the TFEU.

There were 156 cases in 2009 where the assistance in crises concerned citizens of Union or citizens of Nordic countries. There is no information like statistics where cases concerning only citizens of Union are segregated. There is also no information about certain crises, like natural disasters or pandemics.

4.7. Financial advances

Upon application, the **foreign mission may transfer funds against an advance deposit made in a bank account of the Ministry for Foreign Affairs or provide financial assistance to a distressed person within the limits of funds reserved for this purpose, when the mission has found that the person in question is, without the help of the mission, unable to obtain sufficient funds to alleviate immediate distress.**

The mission may provide the following kinds of financial assistance: (1) a small amount of financial assistance to alleviate immediate distress, (2) financial assistance for repatriation, against a signed undertaking to repay the sum, if it is not possible to obtain an advance deposit; or (3) financial assistance for repatriation or necessary and

temporary treatment of an illness, if it is not possible to obtain an advance deposit and it is not possible for the distressed person to sign an undertaking to repay because of a serious illness or other comparable reason.

The value of the small amount of financial assistance shall be deducted from any further funds that the mission may transmit, or it shall be added to a possible undertaking to repay. (*Section 13*)

According to Supreme Administrative Court's precedent KHO:2007:23 it was not in the court's jurisdiction to try appellant's demand concerning financial assistance under Consular Services Act.

4.8. Consular fees

According to Consular Services Act the fees charged for consular services shall be determined by the Ministry for Foreign Affairs. (*Section 39*)

Consular fees are defined in [Decree of the Ministry for Foreign Affairs on Fees for Services Produced by the Foreign Service](#). Necessary services produced in accordance with sections 12, 19, 20 and 22 of the Consular Services Act for persons who are in distress or are arrested, prosecuted or detained abroad, as well as small amounts of financial assistance are free of charge. Any necessary additional expenses are subject to reimbursement.

Public services for which the Ministry for Foreign Affairs and the missions abroad charge a fee include the issues of travel documents, visas and certificates for example. (*Section 3*)

A fee of 100 Euro is charged as a processing fee for the issue of a passport, diplomatic passport, service passport or identity card. A passport may be issued as a fast track passport, the processing fee for which is 120 Euro, and as an express passport, the processing fee for which is 145 Euro. Any additional expenses due to the mode of delivery is subject to reimbursement. (*Section 4*)

The processing fee for a temporary passport is 145 Euro. However, a fee of 100 Euro is charged for the issue of a temporary passport granted exceptionally to citizens of Finland as an emergency passport for one journey and written by hand. A fee of 100 Euro is charged for the issue of a seamen's national identity card, a temporary alien's passport or a laissez-passer travel document, and for the issue of a temporary emergency travel document to citizens of the European Union for their return home. (*Section 4*)

4.9. Reimbursement of the assisting State

Basis for the consular services is that they are free when it is about assisting a distressed EU-citizen. But if there is a need to transmit funds, this transmission shall be subject to a fee of 40 Euro, unless the total amount of assistance is 40 Euro or less according to the Decree of the Ministry for Foreign Affairs on Fees for Services Produced by the Foreign Service, Section 14.

5. Emergency travel document (ETD)

According to section 3b of the Act on Passports, a temporary travel document can be exceptionally granted as an emergency travel document. It can be granted only for a certain traveling period and for a certain traveling route. The emergency travel document is usually granted by the police, but with the permission of Ministry of Foreign Affairs it can be granted by a Finnish embassy or mission. The emergency travel document has to be returned to the passport authority mentioned in Act on

Passports Section 10. The Passport authority in Finland is the police; abroad it is the Finnish embassy or mission.

6. Relevant diplomatic protection

According to Consular Services Act the Ministry for Foreign Affairs and the missions shall in general monitor the observance abroad of the interests and rights of natural and legal persons referred to in section 2, subsection 1, taking into account internationally recognised human rights and other international obligations. (Section 4) This section is based on international law which has defined a right for the State to protect and assist its citizens in a foreign country. This section covers also Finnish legal persons and foreign citizens residing permanently in Finland, who are in possession of or have been granted a permit to reside or work in Finland either permanently or in a comparable manner.

A Finnish citizen has a right to consular services in general on the grounds of citizenship.

7. Summary

Finland is a party to the most important international treaties on consular relations, as well as to the Nordic cooperation agreement. It has concluded many bilateral treaties as well. The national Consular Services Act is relatively new. There appears to be neither an urgent need for revising the national regulations on consular services, nor for new extensive international arrangements in the field.

8. List of important documents

1.

Consular Services Act (No 498), adopted on 22 April 1999.

2.

Decree of the Ministry for Foreign Affairs on Fees for Services Produced by the Foreign Service (No 872), adopted on 16 December 2008.

3.

Agreement concerning co-operation between Finland, Denmark, Iceland, Norway and Sweden (FTS 28/1962) and the implementing decree.

4.

Treaty of Friendship, Commerce and Consular Rights between Finland and the United States of America (FTS 25/1934) and the implementing decree.



France (FR)

1. Introduction

Diplomatic and consular protection in France is a fundamental matter as it is thought that 2,2 million French citizens live abroad, to which must be added all the French who are travelling abroad. However, **it is not supported by a written text and it rests essentially on administrative practice**. Unlike what happens in other States, **in France there are neither constitutional rules nor legislation regarding the right to diplomatic and consular protection**.

Therefore the relevant standards on this matter are the international and European provisions as well as the national actions taken for their application.

Regarding administrative practices, they rest on different services and Ministry of Foreign Affairs' directions, or those of other Ministries (the Ministry of Justice among others). Therefore, it is particularly difficult to get acquainted with them in their entirety. Based on different data, incomplete and of diverse origin, this Report tries to provide a view that is as complete as possible of the French legislation and practice concerning the diplomatic and consular protection.

This Report is based on legal data (internal and international sources) available from the official data base *Légifrance*¹, on the practices reported on the Internet site of the Ministry of Foreign Affairs² and on the elements which were supplied to us by various civil servants from the Ministry of Foreign Affairs.

1.1. Terminology - National acronyms and definitions

Administrations

CCPAS: *Comité consulaire pour la protection et l'action sociale* (Consular committee for protection and social action).

CEFR: *Comité d'entraide aux français rapatriés* (Committee for mutual aid for repatriated French nationals).

CFE: *Caisse des français de l'étranger* (Pension fund for the French living abroad).

DFAE: *Direction des français à l'étranger et de l'administration consulaire, Ministère des affaires étrangères et européennes* (Head Office for the French living abroad and of the Consular administration, Ministry of Foreign and European Affairs).

FGTI: *Fonds de garantie des victimes d'actes de terrorisme et autres infractions* (Warranty fund for the victims of terrorist acts and other offences).

INAVEM: *Institut national d'aide aux victimes et de médiation* (National Institute for help to victims and mediation).

¹ www.legifrance.gouv.fr

² www.diplomatie.gouv.fr

MFE: *Maison des français de l'étranger, Ministère des affaires étrangères et européennes* (House for the French living abroad, Ministry of Foreign and European Affairs)

Official documents

R.T.A.F: *Recueil des traités et accords de la France* (Collection of treaties and agreements of France).

J.O.R.F: *Journal officiel de la République française* (Official Journal of the French Republic).

Legal institutions

C.C: *Conseil Constitutionnel* (Constitutional Council).

CE: *Conseil d'Etat* (State Council).

C.Cass: *Cour de cassation* (Final Court of Appeal).

Revues

A.F.D.I.: *Annuaire français de droit international*.

J.D.I.: *Journal de droit international*.

R.G.D.I.P: *Revue générale de droit international public*.

2. Legal framework

The French legal framework concerning diplomatic and consular protection is made up of various sources: multilateral and bilateral international agreements, European law, arrangements and administrative practices.

Actually, in French law, there is no right to diplomatic and consular protection. Particularly, there is not any constitutional norm on such right.

2.1. International law

France is/is not a party to the following multilateral conventions:

- The Vienna Convention on consular relations: ratification 30 January 1971 (JO, April 18. 1971, p. 3739)
 - Vienna Convention on consular relations Optional Protocol on the Compulsory Settlement of Disputes: ratification 30 January 1971 (JO, April 18. 1971, p. 3739)
- Agreement on the transfer of Corpses, Strasbourg, October 26, 1973 (ETS 80): signature, 9 September 1999; ratification, 9 May 2000.

France is also a party to the European Convention concerning the abolition of legalisation of documents executed by diplomatic agents or consular officers (ETS n 63): signature 7 June 1963; ratification 13 May 1970 (JO, 1 November 1970).

France did not take part in other multilateral conventions on diplomatic protection.

Since the 1963 Vienna Convention, **France agreed on about fifteen bilateral conventions concerning consular protection** with: Algeria, Bulgaria, Cameroon, United States, Hungary, Kiribati, Madagascar, Mauritania, Poland, Czech Republic, Romania, Russia, Senegal, Slovakia, Tunisia, Vietnam, China.

Especially, France agreed on a Convention with Germany in order to facilitate common settlements of diplomatic missions and consular offices (signature: 12 October 2006; ratification: 1 March 2008).

2.2. Transposition of international law into national law

In France (a country considered as being **monist**) there are no such acts of reception of international conventions concerning consular protection. Nevertheless, the applicability of these norms relies on Article 55 of the 1958 Constitution which imposes the ratification or approval and publication on the *Journal Officiel*. The main international conventions concerning consular protection have been ratified and published (see references in Section 9). Furthermore, this Article contains a clause of reciprocity, except to the conventions relating to the fundamental rights of persons, as should be the case of legislation on consular protection.

2.3. Implementation of European law into national law

As regards European law, **Article 23 TFEU has become after the entry into force of the Lisbon Treaty** (as all European law in France), **immediately applicable**. This means that there are no national acts of reception and that this text exists as such in the internal judicial system where it is considered as positive law. However, its content does not fulfil the condition of unconditionality, therefore it is not directly applicable, nor does it have direct effect (i.e., the fact that it can be referred to before the judge as a substitution of national provisions). However, French authorities consider it as the legal foundation of the extension of consular protection.

Concerning Decisions 95/553/CE and 96/409/PESC, they do not come from the Council, but from the Member States' representatives within the Council. Such decisions are *de facto* considered as simplified agreements whose application should be subject to their signature only, but the European authorities seem to have waited their ratification. In France, they have not been, properly speaking, ratified.

On the other hand, **the national law was adapted in order to execute these acts**. Therefore the Decree No. 2002-701 of 29 April, 2001 relating to the protection of the European Union's citizens by diplomatic and consular representations (JORF n°103 of 3 May, 2002, p. 8160) extends consular protection to European citizens on the condition that in the place in which they are located, there is no accessible permanent representation nor accessible and competent Honorary Consul. Therefore, this protection concerns assistance in cases of death, accident or serious disease, arrest or detention, assistance to victims of violence, help and repatriation of the European citizens in distress.

Moreover Decree No. 2005-851 of 27 July 2005 (JORF n°174 of 28 July 2005, p. 12279), amending Decree No. 2004-1543 of 30 December 2004 relating to the attributions of the heads of consular posts concerning travel and residence documents (JORF n° 1, 1 January 2005, p. 73), extends the benefit of the passport whose device conforms to the requirements of Emergency Travel Document (ETD) to European citizens.

2.4. National law

Traditionally, there was not in France any subjective right of a person to diplomatic and consular protection. There was not any text of national law upholding such a right. Therefore, only administrative practice was relevant and such right was guaranteed only by instructions not published of the Ministry of Foreign Affairs.

According to our knowledge there are no plans or discussions to change this situation. Moreover, **the French authorities' decision of granting or refusing diplomatic protection to a person was in principle a governmental act (*acte du***

***gouvernement*) which is impossible to appeal under the French administrative jurisdiction** (see CE, 25 March 1988, Société SAPVIN, rec Lebon, p. 133; however see CE, 6 April 2001, M. Hassan Hayri X, rec Lebon, p. 985, where the Council of State agrees to investigate the consul's refusal to grant a passport to a foreigner legally residing in France).

2.5. Documentation of consular protection

Official Documentation:

The agreements and conventions signed by France are accessible on the database PACTE available at the Ministry of foreign Affairs website or at the *légifrance* website. They are published on J.O.R.F. (*Journal Officiel de la République Française*- Official Journal of the French Republic) and cited on R.T.A.F.

The national legislation as well as the decisions and judgements of the French jurisdiction are available on the *Légifrance* website.

Consular protection is implemented according to the **Consular instructions of Ministry of Foreign Affairs which are not published**.

Periodicals:

The French Consular practice is partially described by the three main French periodicals of international law: the R.G.D.I.P. (*Revue générale de droit international public*), the A.F.D.I. (*Annuaire français de droit international*) and the J.D.I. (*Journal du droit international*).

Legal literature:

It is useful to quote some doctrinal works on consular protection. They can provide a general view on the bibliography on this subject:

S. Touzé, *La protection des droits nationaux à l'étranger. Recherches sur la protection diplomatique*, Pedone, Paris, 2007.

S.F.D.I., Journée d'études de Lyon, *La protection consulaire*, Pedone, Paris, 2006.

J-F. Flauss (dir.), *La protection diplomatique. Mutations contemporaines et pratiques nationales*, Bruylant, Bruxelles, 2003.

2.6. Information to citizens on consular protection

The French Administration has published a guide *Etre victime à l'étranger. Quels droits et actions? Quelles spécificités?*, available on the Ministry of Foreign and European Affairs website and on the Ministry of Justice website.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1 Contractual framework

The bilateral consular conventions and agreements signed by France with third countries do not include any arrangements protecting the citizens of the European Union who live and work in these countries. *A fortiori*, these conventions and agreements do not include any provision extending consular protection to European citizen's family members who are third countries nationals. All these conventions date back to before 1992, which is before European consular protection was established. Consequently it is logical that similar norms have not been included in bilateral agreements and conventions.

Furthermore, France has not informed third countries about the extension of consular protection to citizens of the Union. In case such need occurs, the diplomatic-consular representations will promptly inform the local authorities.

At the moment no agreement is likely to be negotiated with a third country extending consular protection to the Union's citizens or to their family members. **The possibility that any Agreement concluded with a third country could extend consular protection to the Union citizens or to their family members does not seem to be currently an issue.**

3.2. Statistical data on consular practice

France provides its nationals with consular services and the European citizens with its consular protection. **Currently there does not exist any statistical data relating to European citizens whose requests are dealt with as those of French citizens.** Nevertheless, considering that the French consular and diplomatic network is one of the greatest among Member States of the European Union, the issue of human and financial costs of the extension of consular protection to the Union's citizens has arisen already and it would be necessary to dedicate to it specific statistical data in the future.

4. Consular protection in detail

The French consular network includes 113 general consulates and 18 consulates. There are also 8 chanceries with limited tasks, and 530 consular agencies directed by honorary consuls, who are volunteer citizens of the country of residence.

Recently, in 2006, France has signed a **Convention with Germany** to encourage common installations of diplomatic missions and consular posts. The agreement aims at rationalising financial and human resources, putting them in common.

Through this Framework Agreement, France and Germany have agreed to install some of their diplomatic missions or consular posts in common premises. The premises of those establishments include "shared" areas and "exclusive" areas, the latter being assigned to the exclusive use of a diplomatic mission or consular post.

The Framework Agreement requires, first, that it clearly appears that the premises are home to two separate diplomatic missions or consular posts and, secondly, that the existence of a special Franco-German cooperation be properly highlighted.

Finally, the Framework Agreement defines the legal framework for the allocation of costs between the two diplomatic missions or consular posts, common establishments in co-ownership, common establishments in co-rental and rentals between the Parties.

Different common consular missions exist on the basis of administrative arrangements.

France provides several consular services to its citizens: firstly civil services but also the organisation of national elections to which the expatriates can participate (presidential elections, referendum, senatorial, and only lately legislative elections), the creation of an educational network (700 schools throughout the world), very important social and employment assistance services.

Among these services, there is the consular protection, which is mainly based on international texts (the Vienna Convention and bilateral agreements) as they have been ratified by France.

Outside the national texts relating to the implementation of relevant European law legislation, written laws do not exist. Administrative practice is based on the Ministry of the Foreign Affairs' consular instructions which are not published. After all, there is some jurisprudential data that complete these elements.

4.1. Right to consular (and diplomatic) protection

There is no text that provides the right to consular protection.

Afterwards the doctrine considered the diplomatic and consular protection as a totally discretionary competence of the State. Nevertheless, it is not obvious that, nowadays, this kind of interpretation could still be valid due to the implications of Art. 23 TFEU.

In fact, in order to comply with Article 23 provisions and with the more specific ones laid down by the Decision 95/553/CE, France passed the decree relating to the European Union's citizens protection by diplomatic and consular representations of France on 29 April 2002. By laying down in Art. 1 that *"The citizens of the European Union's member States shall enjoy the consular protection of France in the same way as it is provided to French citizens if in the State territory in which they are there is not either an accessible permanent representation or an accessible competent honorary consul"* (underlined by us), and by specifying in Art. 2 the cases where such a competence must be exercised, this decree could be interpreted as one creating a right to consular protection for the residents of the European Union in specific cases. Therefore, it could be considered as implicitly establishing such right for the French citizens for the first time.

According to this practice and this text, the diplomatic protection cannot be granted in principle to any person other than a French or a European citizen and in particular, it can not be enjoyed by refugees or stateless people. However, there are specific elements of the consular protection which can be granted to foreigners.

4.2. Assistance in cases of death

It is worthwhile at this point to distinguish between two different cases.

- (i) In case of a relative of a deceased person being on the third State's territory, it will be his/her duty to inform the consular authorities as well as the local ones of this death.
- (ii) In case the Consulate is informed by the local authorities of one of its nationals' death, it will then contact the family.

In both cases the Consulate shall carry out all the procedures to register the death with the French Registry Office. Moreover the Office can help the deceased person's relatives to complete the necessary legal procedures for the inhumation or the repatriation. **In principle it would be the family's responsibility to organise the funeral.** In case the inhumation takes place without any family members of the deceased, the Consulate shall take care of all the procedures. **In any case the costs are undertaken by the deceased's family or by the deceased's insurance.** Nonetheless, the Consulate will ensure the repatriation of the deceased's belongings (jewels, cash and bank documents) by the means of the diplomatic bag.

4.2.1. Identifying and repatriating remains

Consular authorities cooperate with the local authorities to identify and to repatriate the remains of the French nationals abroad. In case of disappearance of a person, Consular authorities can liaise between the local authorities and the family of the missing person. In case of disappearance of several people, a specific procedure can be implemented (see Section 4.6).

4.3. Assistance in cases of serious accident or serious illness

The French Consulates can liaise with accredited doctors. In principle they set up a list of specialists. In case a serious accident occurs, the Consulates can advise and help citizens consider some actions, such as hospitalisation or repatriation. **In any case the medical expenses are to be paid by the patient. In particular there is no right to be repatriated on public expenses whatever the situation is.** In principle, these expenses are met by private insurance companies through negotiations with private individuals. Nevertheless people who reside abroad and do not have sufficient financial resources can demand for their repatriation to be taken care by the Ministry of Foreign Affairs.

4.4. Assistance in cases of arrest or detention

The Consulate, with the consent of the person in question (who can demand that the Consulate is informed) can point out to the local authorities that the person in question is under the French consular protection. The Consulate can investigate the reason of the arrest, and can visit the person in question to examine the conditions of detention and make sure that the local laws are respected. It proposes the choice of a lawyer to the person in question. The legal cost will be nevertheless met by the person. If need be, the consul can attend the judicial hearings.

In the same way the Consulate can inform and assist the family of the person in question if the family wishes so.

In 2008, 1963 French prisoners abroad enjoyed consular protection.

4.5. Assistance to victims of violent crime

The competences of consular authorities extend to medical and legal advice, as in the cases of Section 4.3 and 4.4.

Furthermore, contacts are arranged with the national services whose competence is extended to French nationals abroad. This way **the national associations in charge of the assistance to victims can also intervene when the crime takes place abroad.** They can be contacted not only when people return to France but also from abroad. For this purpose there is a National Institute for the assistance and mediation in favour of victims (INAVEM) which is equipped with a call center reachable from abroad as well as from the national territory every day from 9 am to 9 pm (French time).

4.6. Assistance in case of collective accident

Even though the notion of “**collective accident**” is not properly speaking a legal notion treated as such in the French legislation, it should be mentioned because it is the condition to the triggering of a particular practice.

According to administrative practices, it is defined by **two elements**: (i) **the event itself** which needs to be sudden, unpredictable and marked by time and place; (ii) **its consequences**, the accident will need to have triggered an important number of victims and serious damage.

Such events, if occurring abroad, can cause a specific reaction from the French authorities as far as they involve an important number of French citizens. For example, such was the case when the Paris-Rio flight crashed on 1 June 2009 (which exploded during the flight and transported 228 passengers among whom 72 French

citizens) or in other cases like the coach accident which happened in California on 29 April 2009 (the coach transporting 34 French out of 36 passengers).

Basically, it means that the Ministry of Foreign Affairs Crisis Center manages all activities concerning assistance to the victims. This Center, which is open 24h and 365 days a year, was created quite recently as it has been operating since 2 July 2008. It makes sure the information is centralised (setting of emergency numbers for example) and the emergency operations are coordinated. **Furthermore, the consular authorities are given an increased role.** This is the case of identification of the victims as the consular authorities must check the identification operations carried out by the local authorities, as well as locking of coffins. The consular authorities have also to set up a list of the victims transmitted to the Ministry of Foreign Affairs Center. Moreover, they centralise the procedures for deaths' declaration. At last, they can direct the victims or the victims' families towards The National Federation for Collective Accidents (*Fédération Nationale des Accidents Collectifs*, FENVAC), capable of providing general assistance and help for the establishing of an *ad hoc* association (which can, for example, act as a civil party in a judicial trial possibly carried out in France, or directly proceed to the negotiation of a compensation).

4.7. Relief and repatriation of distressed citizens

The French diplomatic missions provide general assistance to EU citizens in difficult situations to plan their return to France.

4.7.1. Cases of repatriation

Repatriation may occur in **three different ways**:

- either it can be carried out by the beneficiaries themselves when they can afford it;
- either the beneficiaries cannot carry it out and that is the case of “consular repatriation”, when it is organised by the consulates themselves and funded by the French State (particularly in the case of poverty);
- or there are “emergency repatriations” which are organised by the diplomatic and consular authorities in case of serious emergency and/or following dramatic events like terrorist attacks, military conflicts (Ivory Coast, Lebanon, Chad...), natural catastrophes (Tsunami 2004, Katrina 2005) or pandemics (with restrictions imposed by the risk of contamination, thus leading the French authorities to prioritise the emergency care on site).

If need be, the emergency repatriations can be extended to the citizens of the Union, when the consular repatriations are not considered unless there is a State consultation of which the beneficiary is a national and after he/she or his/her State have committed to refund the expenses. (see Section 4.7.2).

By definition, the first ones are difficult to record. The second ones are decided by the consulates and in particular by their social services, often on recommendation of the local representatives of UFE (The Union of French Abroad, *Union des français de l'étranger*). The number of repatriations by this means seems to have decreased sensibly, going from 800 annual repatriations some ten years ago to 118 consular repatriations in 2007. Finally, for the third category, figures vary greatly.

In all cases, French nationals repatriated in these three different ways benefit from the assistance of the CEFR (Committee of mutual help for repatriated French nationals, *Comité d'entraide aux Français rapatriés*). The CEFR is legally defined

as a private association (according to the 1901 French law) but is funded and controlled by the Ministry of Foreign Affairs and the Social Welfare Ministry. It carries out the reception of repatriated nationals and the reception of distressed people, their housing supporting them until their reintegration.

4.7.1.1. Terrorist acts

In case of terrorist attacks or hijacking occurring abroad, the diplomatic and consular authorities intervene in partnership with the local authorities to provide assistance to the French victims. They organise the repatriation of the victims in partnership with the crisis Center of the Ministry of Foreign Affairs (see for example the terrorist outrage which occurred in Cairo in February 2009 when French victims were repatriated by regular and exceptional flights). Consequently they have to inform the Fund of Guarantee for victims of terrorism and other offences (FGTI) which is in charge of the compensation of the French victims or of their relatives. Consequently this fund contacts the victims on the basis of the information received by the Consulate.

4.7.1.2. Statistical data on repatriation of distressed citizens

Only the data regarding individual repatriations (hypothesis 1 and 2 concerning the taxonomy developed further up), excluding data concerning emergency repatriations, could be collected.

In 2008, 351 repatriations of French nationals living abroad or travelling were taken care by the Ministry of Foreign Affairs, all categories included (poverty, sanitary repatriations). Repatriations were mainly carried out for distressed people (256) wishing to return to France in order to be accommodated by their family or by the Center of Vaujours of the Mutual Help Committee for the French nationals repatriated (CEFR), as well as for people having to return for sanitary reasons (95).

Statistiques

Repatriations	2008	2007
Repatriations for poverty	256	260
- CEFR accommodation	128	130
- family accommodation	45	54
- youth residence accommodation (under aged)	13	10
- students on scholarship	62	58
- AFPA internship students	8	8
Sanitary repatriations	95	99
- sanitary evacuation by medical flight	7	3
- repatriations for psychiatric reasons	57	50
- others	31	46

4.7.2. Financial advances

Concerning French citizens, the authorities provide the funding for the repatriation in cases of poverty and emergency. In 2008, € 483.244 was allocated for the repatriation of French citizens to France without considering emergency

repatriations, including € 358.371 for sanitary repatriations. **In all cases, this advance must in principle be refunded by insurances, by the family or by the beneficiaries themselves. However, it seems that the practice not to ask refund for emergency repatriations has been introduced.** A law proposal, presented to the Council of Ministers on 22 July 2009, aims at bringing this practice to an end by implementing the demand for the refund of emergency expenses engaged abroad by France as soon as the beneficiaries have deliberately exposed themselves to common dangers (law proposal concerning the external action of the State³).

According to Article 13 of this bill. *“L’Etat peut exiger, dans la limite d’un plafond fixé par décret, le remboursement de tout ou partie des dépenses qu’il a engagées ou dont il serait redevable à l’égard de tiers à l’occasion d’opérations de secours à l’étranger au bénéfice de personnes s’étant délibérément exposées, sauf motif légitime tiré notamment de leur activité professionnelle ou d’une situation d’urgence, à des risques qu’elles ne pouvaient ignorer au regard des mises en garde reçues.”*

As regards financial advances granted to European citizens, Article 3 of the decree 29 April 2002 quoted above indicates that, **except extreme emergency, they can in principle be allowed only with the agreement of the diplomatic authorities which are the nearest to the State of which they are nationals and on the condition that the beneficiaries undertake to refund these advances.** If they cannot do it, the State of which they are nationals must refund these advances.

4.8. Foreign damages that citizens have in their own country

In principle the origin of persons responsible for damages is not taken into account and legal civil procedures can be undertaken by the victims in order to get compensation under ordinary law procedures. Besides this, **for serious harm persons had to suffer, there is a compensation system which is open to all French and European citizens who were victims of serious facts which occurred on the national territory, regardless the nationality of the one who caused them.** (Article L 706-3 code of penal procedure).

Nevertheless, there is an exception to this rule. On the basis of the Vienna Convention on diplomatic relations, foreign States and their diplomatic and consular staff benefit from a legal immunity for acts and actions which, for their nature and purpose, are involved in the implementation of the sovereignty of the States. On the other hand, in case of acts of private management ordinary law procedures are applicable (see for example Supreme Court, 1st civil chamber, November 19, 2008, Madame I...X..., number 1150). In case of acts related to the sovereignty of foreign States, the victims may try to ascribe the responsibility without fault of the French State on the basis of the Vienna Convention. But the very restrictive aspect of the conditions of engagement of this type of responsibility makes this possibility hypothetical. (see CE, October 4, 1999, *Syndicats des copropriétaires des 14-16 boulevard Flandrin*, rec Lebon, p. 297).

4.9. Compensation in France of damage suffered by citizens abroad

There is not any compensation fund able to compensate the damages of the owner's goods abroad, even in the situation of a natural catastrophe or serious political troubles.

However, for serious damages to the persons (death, body harm triggering complete work incapability of more than one month or permanent disability; sexual assault) or for minor harm to the persons, the national compensation mechanisms can

³ http://www.legifrance.gouv.fr/html/actualite/actualite_legislative/action_exterieuse_etat.html

normally work even if these events take place abroad. Indeed, the Article 706-3 of penal procedure indicates that the **access to the CIVI** (*Commission d'Indemnisation des Victimes d'infraction* - Commission for the compensation of Victims of offences) **is open to any person of French nationality (not to other European citizens in this case, unlike what exists for damages occurring in France), regardless the place where the offence was committed**. If the offence takes place abroad, the only condition is that the facts constitute as well an offence punished in the French criminal law. The CIVI (there is one within every local *tribunal d'instance*) inquires the requests presented by the victims or the persons who legally represent them and can grant a complete compensation for the most serious offences and a partial compensation for the less serious ones, the latter being reserved to persons with low incomes.

The compensation itself is paid by the Fund of Guarantee for the Victims of Terrorist Acts and Other Offences (FGTI).

5. Emergency travel document (ETD)

In case of loss or stolen identity documents, the French consulates provide their nationals with statements on presentation of declarations of theft or loss issued by the local authorities. They also issue either a pass only allowing them to go back to France, or, after consultation with the competent French authority, a new passport.

The possibility to grant passes for a single journey to France also exists for the refugees, stateless persons and beneficiaries of subsidiary protection and for the members of their families; for foreigners legally residing in France or who are granted a short-stay visa allowing them to enter in France; for minors who were adopted and beneficieate by a long-stay visa for adoption on request of the adopting parent.

Finally, the Decree No. 2005-851 quoted above extended the possibility to grant a passport to all the European Union nationals, after a check from the authorities of the Member State of which the individual has the nationality. **Consequently, this passport does not allow him/her to go to France but to the country of which he/her is a national citizen.**

Therefore, there has been no provision of a particular Emergency Travel Document (ETD) to meet the European requirements, but an extension of the pre-existing system.

6. Relevant diplomatic protection

In France, there are no specific norms on diplomatic protection. The applicable texts and the appropriate case law include diplomatic and consular protection.

7. Exercise of consular functions for expats

Expatriates are entitled to have the same support awarded to French citizens abroad for short stays. This aid has been dealt with in the above Sections (assistance in cases of death, serious injury, serious illness, arrest or detention, etc.).

Expatriates may benefit of a large number of services that are detailed in a guide that has recently published by the *Maison des Français de l'Etranger*⁴ under the title *Livret du français à l'étranger* (Handbook of French citizen abroad).

⁴ www.mfe.org

The concern is on civil services as well as services, in countries where they exist, provided by:

- Consular Committees for protection and advocacy (which support destitute, elderly and disabled people)
- Consular Committees for employment and training (which provide assistance in promoting employability).

Moreover, expatriates can stipulate, under specific conditions, a number of French social insurances: as regards health insurance and retirement, they may join the *Caisse des français de l'étranger* (Fund of the French living abroad), which is a branch of social security; as regards unemployment insurance, they may join the *Pôle emploi services, services expatriés* (Employment services center, expatriate services)

Finally, the Ministry of Foreign Affairs funds in whole or partially many organizations that assist expatriates in various fields. For example, the *Agence pour l'enseignement français à l'étranger* - AEFÉ (Agency for French education abroad) runs 253 educational institutions abroad and, if this teaching is partly on charge, it distributes grants. Similarly, the French Alliance is present in 136 countries where it promotes teaching of French and dissemination of the French culture.

8. Summary

France pays a constant attention to diplomatic and consular protection of its nationals, which beneficiaries from a particularly extended consular network throughout the world. This network is very expensive: this explains why **France tries to reduce its expenses** (common consular missions with other States, lower number of consular repatriations). Moreover this protection is reinforced by a developed social support whose possible extension to European citizens would imply high costs.

From the legal point of view, France is part of “classic” international treaties concerning diplomatic and consular protection, to which several bilateral treaties are added (all preceding the creation of European citizenship and therefore not including the particular clause on the extension of the protection to European citizens).

In national law, there are no texts which organise this protection which is based, therefore, on administrative practice, excluding the decrees passed for the application of European measures. These decrees also lay down the subjected extension of the diplomatic and consular protection to the European citizens. **The implementation of these decrees does not seem to have caused any particular difficulties.**

9. List of important documents

International treaties and related national instruments

1.

Title: Convention de Vienne sur les relations consulaires, Vienne, 24 avril 1963

Publication reference: JORF 18 avril 1971 p. 3739

Entry into force: 19 mars 1967 - pour la France, ratification le 30 janvier 1971

English title: Vienna Convention on Consular Relations, Vienna, 24 April 1963

2.

Title: Protocole de signature facultatif à la Convention de Vienne sur les relations consulaires concernant le règlement obligatoire des différends, Vienne, 24 avril 1963

Publication reference: JORF 18 avril 1971 p. 3739

Entry into force: 19 mars 1967 - pour la France, ratification le 30 janvier 1971

English title: Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes, Vienna, 24 April 1963

3.

Title: Accord sur le transfert des personnes décédées, Strasbourg, 26 octobre 1973 (STCE n° 80)

Publication reference: JORF 24 octobre 2000

Entry into force: 11 novembre 1975 - pour la France, ratification le 9 mai 2000

Note: Déclaration émise concernant l'article 8 de l'accord

4.

Title: Convention européenne relative à la suppression de la légalisation des actes établis par les agents diplomatiques et consulaires, Londres, 7 juin 1968 (STCE n°63)

Publication reference: JORF 1er novembre 1970

Entry into force: 14 août 1970 - pour la France, ratification le 13 mai 1970

5.

Title: Convention consulaire entre le Gouvernement de la République française et le Gouvernement de la République algérienne démocratique et populaire, ensemble un échange de lettres

Publication reference: JORF 16.04.1980, p. 950

Entry into force: 01.03.1980

6.

Title: Accord sous forme d'échange de lettres franco-brésilien visant à instituer un mécanisme permanent de coopération dans le domaine consulaire, Paris, 30 janvier 1981

Publication reference: JORF 08.08.1981, p. 2186

Entry into force: 30.01.1981

7.

Title: Accord cadre entre le gouvernement de la République française et le gouvernement de la république fédérale d'Allemagne relatif aux implantations communes de missions diplomatiques et de postes consulaires, Paris, 12 octobre 2006

Publication reference: JORF 23.03.2008, p. 5040

Entry into force: 01.03.2008

8.

Title: Convention consulaire entre le gouvernement de la République française et le gouvernement de la République algérienne démocratique et populaire, Paris, 24 mai 1974

Publication reference: JORF 21.12.1975, p. 13425

Entry into force: 01.03.1980

9.

Title: Convention consulaire entre la République française et la République populaire de Bulgarie, Paris, 27 juillet 1968

Publication reference: JORF 21.05.1970, p. 4747

Entry into force: 01.04.1970

10.

Title: Convention consulaire entre le gouvernement de la République française et le gouvernement de la République unie du Cameroun, Yaoundé, 21 février 1974

Publication reference: JORF 21 mai 1975, p. 5093

Entry into force: 01.12.1970

11.

Title: Convention consulaire entre le gouvernement de la France et les Etats-Unis d'Amérique, Paris, 18 juillet 1966

Publication reference: JORF 06.07.1967, p. 6756

Entry into force: 07.01.1968

12.

Title: Convention consulaire entre le gouvernement de la République française et la République populaire hongroise, Paris, 28 juillet 1968

Publication reference: JORF 22.10.1967, p. 10412

Entry into force: 15.10.1967

13.

Title: Convention consulaire franco-malgache, Tanarive, 25 avril 1963

Publication reference: JORF 25.04.1963, p. 5655

Entry into force: 27.07.1965

14.

Title: Convention consulaire entre le gouvernement de la République française et la République islamique de Mauritanie, Nouakchott, 7 février 1964

Publication reference: JORF 19.01.1966, p. 517

Entry into force: 30.07.1965

15.

Title: Convention consulaire entre le gouvernement de la République française et la République populaire de Pologne, Paris, 20 février 1976

Publication reference: JORF 22.07.1977, p. 3867

Entry into force: 19.06.1977

16.

Title: Convention consulaire entre le gouvernement de la République française et la République socialiste de Roumanie, 18 mai 1968

Publication reference: JORF 19.08.1970, p. 7799

Entry into force: 16.07.1970

17.

Title: Convention consulaire entre le gouvernement de la République française et la République du Sénégal, Paris, 23 mars 1974

Publication reference: JORF 30.11.1976, p. 6868

Entry into force: 01.09.1976

18.

Title: Convention consulaire entre la France et la République tunisienne, Paris, 28 juin 1972

Publication reference: JORF 27.01.1974, p. 1059

Entry into force: 01.01.1974

19.

Title: Convention consulaire entre le gouvernement de la République française et la République socialiste du Vietnam, Paris, 21 décembre 1981

Publication reference: JORF 26.05.1983, p. 1571

Entry into force: 01.12.1983

20.

Title: Convention consulaire entre le gouvernement de la République française et l'Union des Républiques socialistes soviétiques (succession Russie), Paris, 8 décembre 1966

Publication reference: JORF 12.05.1969, p. 4771

Entry into force: 19.09.1969

21.

Title: Convention consulaire entre le gouvernement de la République française et la République socialiste tchécoslovaque (succession République Tchèque), Prague, 22 janvier 1969

Publication reference: JORF 10.03.1971, p. 2333

Entry into force: 19.06.1995

National acts related to international and European documents

22.

Title: Décret 2002-701 du 29 avril 2001, relatif à la protection des citoyens de l'Union européenne par les représentations diplomatiques et consulaires

Publication reference: JORF n°103, 3 mai 2002, p. 8160

Short summary: Etend la protection consulaire aux ressortissants communautaires à condition qu'il n'existe pas sur le territoire où ils se trouvent de représentation permanente accessible ou de consul honoraire accessible et compétent

23.

Title: Décret n°2005-851 du 27 juillet 2005, modifiant le décret n°2004-1543 du 30 décembre 2004 relatif aux attributions des chefs de poste consulaire en matière de titres de voyages

Publication reference: JORF n°174 du 28 juillet 2005, p. 12279

Short summary: Etend aux citoyens communautaires le bénéfice des laissez-passer dont le dispositif satisfait aux exigences du titre de voyage provisoire (TVP)

Case law

24.

Title: CE, 25 mars 1988, Société SAPVIN

Publication reference: Rec Lebon, p. 133

Short summary: La décision des autorités françaises d'octroyer ou de refuser la protection diplomatique à un individu est en principe un "acte de gouvernement" insusceptible de recours

25.

Title: CE, 6 avril 2001, M. Hassan Hayri X

Publication reference: Rec Lebon, p. 985

Short summary: Est susceptible de recours le refus du consul de France d'octroyer un laissez-passer à un étranger résidant légalement en France

26.

Title: C. Cass., 1^{ère} chambre civile, 19 novembre 2008, Madame I...X..., n°1150

Publication reference: Cass.civ. 1, Bull., n. 266, p. 228

27.

Title: CE, 4 octobre 1999, Syndicats des copropriétaires des 14-16 boulevard Flandrin

Publication reference: Rec Lebon, p. 297

Short summary: Refus d'engager la responsabilité sans faute du gouvernement pour des dommages subis indirectement en raison de la convention de Vienne sur les relations consulaires (en ce qu'elle confère une immunité aux personnes ayant commis le dommage)

Other documents

28.

Title: Guide: "Etre victime à l'étranger. Quels droits et actions? Quelles spécificités?"

Publication reference: www.diplomatie.gouv.fr: Rubrique "vos espaces > conseils aux voyageurs > le rôle d'un consulat" ou Rubrique "conseils aux voyageurs > fiches thématiques > victimes à l'étranger"



Germany - Deutschland (DE)

1. Introduction

The following Report considers the German legal instruments and administrative practices which shape the framework for consular and diplomatic assistance and protection for Germans and unrepresented EU nationals abroad as of 20 September 2010. As case law on consular and diplomatic assistance and protection is more than scarce, the administrative practice in this field might be more important. Unfortunately **most of the information about the administrative practice is considered to be internal by the German Foreign Office/Ministry of Foreign Affairs (*Auswärtiges Amt*)** and thus treated as confidential and not made available to the public.

The Report is based on international law by which Germany is bound, German law, textbooks, articles, information available on the web pages of the German Foreign Office and German embassies as well as information transmitted by the German Foreign Office.

2. Legal Framework of Diplomatic and Consular Protection

In Germany diplomatic and consular protection is governed by international law, Union law, national constitutional law, national statutory and by-law. Finally internal guidelines and circulars of the administration (*Rundschreiben/Runderlass*) are important but do not directly affect the legal position of the individual. **The German Constitution (*Grundgesetz*), hereinafter referred to as Basic Law, does not contain an explicit right to diplomatic or consular protection.** The only *explicit* source where such a right might be derived from seems to be the Consular Act (*Gesetz über die Konsularbeamten, ihre Aufgaben und Befugnisse*) from 11 September 1974¹ or the Foreign Service Act (*Gesetz über den Auswärtigen Dienst*) from 30 August 1990² which both set out that it is within the duties of the consular officers to provide consular protection and assistance. Moreover, one should take account of the Act on Fees for Public Services Abroad (*Auslandskostengesetz*) from 21 February 1978³ and the By-law on Fees for Public Services Abroad (*Auslandskostenverordnung*).⁴

The Consular Act regulates the services that can be provided by consular officials, consular fees are regulated by the Act on Fees for Public Services Abroad and its bylaw, and the Foreign Service Act regulates the competence of the Foreign Office in these matters.

¹ Act published in *Bundesgesetzblatt* (Federal Official Journal) BGBl. 1974 I p. 2317, lastly amended on 17 December 2008 (available at <http://www.auswaertiges-amt.de/diplo/de/Laenderinformationen/01-Laender/Konsularisches/ddKonsulargesetz.pdf>).

² BGBl. 1990 I p. 1842, lastly amended 5 February 2009.

³ BGBl. 1978 I p. 301, lastly amended 5 May 2004.

⁴ BGBl. 2001 I p. 4161, lastly amended 21 December 2007.

2.1. International Law

With regard to diplomatic and consular protection Germany is bound by most of the important international treaties in the field of diplomatic and consular protection and is also bound by customary international law and general principles of international law.⁵

With regard to the most important **multilateral** treaties on diplomatic and consular protection the following treaties have been ratified by Germany:

- Vienna Convention on Diplomatic Relations⁶
- Vienna Convention on Consular Relations⁷
 - Optional Protocol to the Vienna Convention on Consular Relations about Nationality Acquisition⁸
 - Optional Protocol to the Vienna Convention concerning the Compulsory Settlement of Disputes⁹
- International Agreement on the Conveyance of Corpses of 10 February 1937¹⁰
- European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983¹¹

The European Agreement on the Transfer of Corpses of 27 June 1974 was signed but not ratified by Germany.

In the area of **bilateral** consular agreements the following treaties can be named, a treaty between Germany and:

- Fidji of 30 July 1956¹²
- Grenada of 30 July 1956¹³
- Jamaica of 30 July 1956¹⁴
- Malawi of 30 July 1956¹⁵
- Mauritius of 30 July 1956¹⁶
- The Soviet Union of 25 April 1958¹⁷
- Spain of 12 January 1872¹⁸
- Turkey of 28 May 1929¹⁹
- United Kingdom and Northern Ireland of 30 July 1956²⁰
- United States (Treaty on Friendship- Commerce and Consular Affairs) of 8 December 1923²¹

⁵ With regard to the legal status of these see below [Section 2.2](#)

⁶ BGBl. 1964 II p. 959.

⁷ BGBl. 1969 II p. 1589.

⁸ BGBl. 1969 II, p. 1675.

⁹ BGBl. 1969 II p. 1675.

¹⁰ RGBl. 1938 II p. 199.

¹¹ BGBl. 1996 II p. 1121.

¹² BGBl. 1957 II p. 285.

¹³ BGBl. 1957 II, p. 285.

¹⁴ BGBl. 1957 II, p. 285.

¹⁵ BGBl. 1957 II, p. 285.

¹⁶ BGBl. 1957 II p. 285.

¹⁷ BGBl. 1959 II p. 233.

¹⁸ RGBl. 1872 211.

¹⁹ RGBl. 1930 II p. 748.

²⁰ BGBl. 1957 II p. 285.

²¹ RGBl. 1925 II p. 795.

The last type of these consular treaties was the treaty concluded with the Soviet Union in 1958.²²

Several agreements between Germany and other EU Member States exist concerning the sharing of diplomatic and consular locations, or which set out a common external service provider for visa applications. Moreover, several informal agreements relating to consular protection for unrepresented EU-citizens exist. The issue of burden sharing is mostly handled on a case-by-case basis and addressed in internal consular instructions. Thus, it might happen that an EU citizen is referred to another EU embassy if this accords to the burden sharing agreement and does not endanger the citizen.

It seems that Germany did not directly notify third countries of Article 23 TFEU.

Third countries were, however, notified by the Presidency of the European Union in 1993 that EU Member States will provide diplomatic and consular protection for all Member States.²³ However, Germany notified the authorities when it took over the representation of Denmark in Syria during the so called “caricature crisis” in 2006.

2.2. Transposition of international law into national law

The conclusion of international treaties and the relationship between international law and German law is addressed by Arts 25, 32, 59 of the Basic Law.

Art. 32 of the Basic Law sets out the division of competence between the Federal State of Germany and its *Länder* (the different States of the Federal State of Germany) in external matters. External matters are within the competence of the federal State. The federal State, however, has to hear the *Länder* if their interest are affected. In turn the *Länder* are allowed by Art. 32 para.3 of the Basic Law to conclude an international agreement if the matter is within their legislative competence and the federal State agrees.

Art 59 para. 1 of the Basic Law sets out that the President of the Federal State of Germany acts for the Federal State of Germany in matters of international law. Art. 59 para. 2 of the Basic Law establishes, however, the involvement of the federal Legislature. Yet, this Article does not spell out the exact interplay between the Government, the President and the Parliament. In practice the Government occupies the central role in the drafting of international agreements and foreign policy in general which can be explained as a tacit authorisation of the Government by the President.²⁴ After drafting and signing the international agreement at international level, the domestic procedure starts. In Germany the procedure is regulated by Art. 59 para. 2, 1st sentence of the Basic Law, which sets out that agreements which concern the political relationships of the federal State or concern the legislative competences of the federal State need the approval of the Parliament in the form that would be required for federal Regulation. Hence, after the approval in form of a formal law by the Parliament, the President engrosses the law according to Art. 82 para. 1 of the Basic Law. The law is

²² With regard to treaties concluded by the German Democratic Republic (DDR) the Federal Republic of Germany only succeeded when it made a specific declaration to this end. But in the area of consular protection no treaty has become binding in this way.

²³ Bachmann, in: Hecker/Müller-Chorus, *Handbuch der konsularischen Praxis*, München, loose leaf.

²⁴ BVerfGE 68, 1 (82). On the other hand, even if the President would be acting in its capacity as representative of Germany in foreign matters, he would have to take account of the *Richtlinienkompetenz* of the *Kanzler* in policy matters (the fact that it is for the *Kanzler* to set the fundamental of the policy, including foreign policy) as set out in Article 65 of the Basic Law.

then published in the Official Journal. After this process the President ratifies the agreement at international level.²⁵

One can describe the relationship between international law and German law as dualistic, since a domestic legal norm is needed in order for international law to be applicable in Germany.²⁶ In this context, however, the German Constitution distinguishes between customary international law and general principles of international law on the one hand and treaty based international law on the other hand. Art. 25 of the Basic Law provides that customary international law and general principles of international law are considered to be federal laws. These sources of law, however, take priority over conflicting Federal laws, while in the case of conflict with the Basic Law the latter prevails.²⁷ International Law derived from international treaties on the other hand has to pass the process describe above according to Art. 59 para. 2 of the Basic Law. **Generally, it is recognized by scholarship and by the case-law that treaties do not prevail over ordinary law. Therefore, in line with the rule of “*lex posterior derogat legi priori*”, ordinary statutes which have been adopted after the incorporation of an international treaty prevail.**²⁸

2.3. Implementation of European law into national law

The Basic Law deals in its Article 23 with Germany as part of the European Union. Nonetheless, this Article does not deal with the relationship between EU law and national law. However, the concepts developed at EU level of direct applicability and direct effect govern the relationship between EU law and national law so long as no fundamental conflict between these obligations and the Basic Law arise as the Bundesverfassungsgericht has repeatedly held.²⁹ Concluding, one might say that the principle of supremacy with regard to Union law governs the relationship between EU and national Law.

The two most important EU legal acts in the area of diplomatic and consular protection Decision 95/553/EC and Decision 96/409/CSFP have not been directly transferred into national law. Hence, the Consular Act is according to the wording still only applicable to Germans and not equally to EU nationals.³⁰ Both EU decisions have been implemented by circulars (*Runderlass*)³¹, these do not directly affect the

²⁵ Eventhough it has to pointed out that this does not apply to so called administrative agreements as can be infered from Article 59 paragraph 2 of the Basic Law.

²⁶ The norms are Article 25 and Article 59 of the Basic Law in conjunction with the regulation approving the Treaty. See in this regard BVerfGE 111, 307 (318) explaining that the relationship has to be defined by national law.

²⁷ One might note that Federal Law takes priority over Law of the *Länder* and even the constitutional law of the *Länder*, Article 31 of the Basic Law.

²⁸ However, there have been almost no cases, in which international law was set aside by national law. The *Bundesverfassungsgericht* favours a harmonising interpretation as it required that the legislator to clearly express that departure from the international obligations is intended. See in this regard BVerfGE 4, 157 (167 f.); 74, 358 (370); 110, 203 (210 ff.).

²⁹ BVerfGE 73, 339 (Solange II decision); BVerfGE 89, 155 (Maastricht decision); BVerfGE 102, 147 (Banana decision) and most recently with the Lisbon decision, BVerfGE 123, 267. See, however, the most recent Mangold decision which seems to indicate an acceptance of supremacy without further conditions (decision of the *Bundesverfassungsgericht* 6 July 2010 – 2 BvR 2661/06).

³⁰ However, it can be pointed out that the direct effect of the decision or the direct effect of Arts. 20 and 23 TFEU are sometimes considered to build a basis for a non-discriminatory application of that Act. See in this regard Ruffert, *Archiv des Völkerrechts* 35 (1997), 459 (475). Kluth, ‘Article 20 EGV’ in Callies/Ruffert, *Das Verfassungsrecht der Europäischen Union* (3. ed Munich, 2007) para 18.

³¹ These circulars, which are not officially published, are regularly updated and send to all consular officials. These were apparently accompanied by the respective decisions and the EU guidelines. As these

legal position of the individual, as they are internal guidelines. However, these guidelines regulate the discretion of the consular officers. In this way they can have indirect external effects. This is so, since such acts constitute an administrative practice and a departure from practice gives rise to a claim based on a right to non-discrimination prescribed by Art. 3 Basic Law. Hence, one could conclude that Decision 95/553/EC and 96/409/CSFP are effectively incorporated into the German legal order.³²

With regard to the Emergency Travel Document referred to in Decision 96/409/CSFP it should be pointed out that in general Germany does not issue the Emergency Travel Document because it is considered as an unsafe document. However, German and EU citizens can acquire a travel document as substitute to the passport³³. EU nationals are, as Germans, asked to pay the costs of the evacuation and related matters.

Concerning the financial advances within the meaning of Art. 6 of Decision 95/553/EC, it has to be pointed out that such a support is only granted if there is no other source of funds (including from family members, friends and employer) and only after a previous authorization from the other Member State. These costs have to be reimbursed. *In praxi* the financial assistance will be provided in close coordination with the closest representation of the other Member State or its embassy in Berlin. As the Guidelines on Consular Cooperation³⁴ prescribe, the reimbursement for actions on behalf of another Member State are arranged between the Member State on a *pro rata* basis.³⁵

On a practical level, the experiences with Decision 95/553/EC and Decision 96/409/CSFP, have been described by the German Foreign Ministry as positive and without major problems.

Moreover, it might be pointed out that the term of ‘accessible permanent representation’ of Decision 95/553/EC and Decision 96/409/CSFP is broadly interpreted, so that especially in larger countries travel documents have been issued even in cases where the other Member State had a diplomatic representation.

2.4. National Law

The legal framework at national level for diplomatic and consular protection is provided by the German Constitution and ordinary law, by-laws and internal guidelines and circulars of the administration (*Rundschreiben*) which, however, only indirectly affects the legal position of the individual.

The German Constitution does not expressly grant a right to consular protection/assistance.³⁶ However the German Constitutional Court (the

circulars are considered to be internal, the Foreign Office refused to give access to them, even in the course of this research.

³² However, in terms of legal certainty and transparency one may question whether the implementation by means of internal circulars and guidelines is sufficient.

³³ A ‘*Reiseausweis als Passersatz*’ is issued. This practice seems not to involve difficulties but will be replaced as soon as the ‘new and save’ emergency travel document is available, according to the reply from the Foreign Office of the 17.9.2010.

³⁴ Council of the European Union, ‘Guidelines on Consular Protection of EU Citizens in Third Countries’ (Brussels, 16 June 2006), 10109/2/06 REV 2.

³⁵ Though *in praxi* these payments are waived e.g., because it is only a small amount, or because of reciprocity or other political reasons.

³⁶ This might be explained with the special circumstances during the time when the Basic Law was written, as all foreign policy matters were still reserved for the Allies. This becomes clear if one considers that the previous German Constitutions contained specific provisions setting out a right to protection of the German Citizen abroad, e.g., Art. 3 para. 6 of the *Reichsverfassung* from 1871 ‘Germans

Bundesverfassungsgericht) has acknowledged that in certain situations, consular and diplomatic protection might be required. The basis for this was found to be a combination of the general principle of protection and loyalty between the State and the citizen, the constitutional tradition and the effect of the fundamental rights.³⁷ However, it is not clear whether the *Bundesverfassungsgericht* takes the view that this is a fundamental right in the sense of a right to protection of the individual or whether this is more akin to a general principle that the State has to observe.³⁸ However, **it seems that the majority of commentators do not acknowledge the existence of such a fundamental right of the individual. The Basic Law would foresee that the State has discretion with regard to the question whether or not to grant diplomatic/consular protection. The individual could on the basis of the Basic Law only demand that this discretion is not abused so that the decision whether to grant such protection is unbiased and rational.**³⁹

However, it should be noted that in the most cases of emergency like e.g., lost passport, or serious illness etc. there will be a right to diplomatic and consular protection and assistance, as not granting such protection and assistance would nearly always amount to an abuse of discretion. Yet, the exact conditions of such protection and assistance would again be subject to discretion of the consular officer.

In this context the internal guidelines and circulars of the administration might also come into play and could have an effect on the legal position of the individual, as they usually establish an administrative practice. Thus, a departure from this practice might give also rise to a claim based on the non-discrimination clause of Art. 3 of the Basic Law.

With regard to **ordinary law** one has to take account of the Consular Act (*Gesetz über die Konsularbeamten, ihre Aufgaben und Befugnisse*) of 11 September 1974⁴⁰, the Act on Fees for Public Services Abroad (*Auslandskostengesetz*) of 21 February 1978⁴¹ and the Foreign Service Act (*Gesetz über den Auswärtigen Dienst*) of 30 August 1990.⁴² The Consular Act regulates the services provided, the fees are regulated by the Act on Fees for Public Services Abroad and the Foreign Service Act regulates the competence of the Foreign Office in these matters.

Paragraph 1 subparagraph 2, 5th indent of the Foreign Service Act sets out that the Civil Service of Foreign Ministry is charged with assisting and helping Germans abroad.

have an equal right to protection by the German Reich against the foreign countries' or the Constitution of Weimar Republic which set out in Art. 112 para. 2 '*Against foreign countries every citizen has a right to protection by the German Reich within an outside Germany.*'

³⁷ See in this regard BVerfGE 55, 349 (364); 6, 290 (299); 40, 141 (177 f.); 41, 126 (182); BVerwGE 62, 11 (14).

³⁸ However, the *Bundesverwaltungsgericht* seems sometimes to hint at such a fundamental right, yet without going into details (BVerwGE 62, 11, (149). One might also interpret the Rudolph Hess decision of the *Bundesverfassungsgericht* in such a way even though there is no clear acknowledgement of such a right BVerfG, Beschl. v. 16.12.1980 – 2 BvR 419/80, 28 NJW 1499 (1981) and 90 ILR 387-400.

³⁹ Geck, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 1956/57, 518; Doehring, *Diplomatischer Schutz*, S. 89 ff.; Bleckmann, *Grundgesetz und Völkerrecht*, 1975, p. 245; Treviranus, *Die Öffentliche Verwaltung* 1979, 37; see in general also Klein, *Die Öffentliche Verwaltung* 1979, 704 ff.; Rudolf, Walter: *Die Ausübung des diplomatischen Schutzes für Deutsche*, in *Staatsangehörigkeit, Soziale Grundrechte, Wirtschaftliche Zusammenarbeit*, Deutsch-Polnisches Rechtskolloquium 1974, hrsg. von Józef Kokot und Krzysztof Skubiszewski, 1976, p. 61 ff. on p. 81.

⁴⁰ BGBl. 1974 I p. 2317, lastly amended on 17 December 2008 (available at <http://www.auswaertiges-amt.de/diplo/de/Laenderinformationen/01-Laender/Konsularisches/ddKonsulargesetz.pdf>).

⁴¹ BGBl. 1978 I p. 301, lastly amended 5 May 2004.

⁴² BGBl. 1990 I p. 1842, lastly amended 5 February 2009.

The Consular Act seems to pick up the theme that no fundamental right to diplomatic and consular assistance exists as it sets out in paragraph 1 that *‘Consular officials have the function [...] to give German citizens and domestic legal persons council and support at their due discretion.’* The general clause on consular assistance is paragraph 5 which sets out that: *‘Consular officers should, in their consular district, help Germans requiring assistance if no other means of help in this situation of distress is available.’*⁴³ Moreover, the paragraph sets out that *‘if reasons of equity demand it, assistance can also be given to Non-German family members if they are living in a common household or were living in a common household for a longer time.’* Additionally, the provision stipulates that the kind and extent of assistance depends on the local situations and that help might also include legal protection, or assistance to return to the normal place of residency, and that assistance can be rejected if the assistance has been abused in the past and this rejection would not endanger the health and security of that person. Finally, the provision specifies a duty of reimbursement in cases of assistance; this obligation to reimbursement includes even the legal heirs and, within certain limits, the relatives and spouse. The subsequent provisions of the Consular Act are addressed to special situations of assistance and protection. With regard to occurring or immanent *‘natural disasters, cases of war or revolution or any other comparable situation which causes harm to the population or parts of the population’*, paragraph 6 sets out that consular officials *‘should take measures to ensure that harmed or endangered Germans⁴⁴ are assisted and protected.’* Reimbursement is stipulated but can be waived *‘if the personal situations of the assisted person or other situations demand this.’* Concerning prisoners and people in custody paragraph 7 sets out that consular officials *‘should, if the person requests assistance, take care of such persons and especially arrange for legal representation and protection’*. Reimbursement for these cases is not foreseen. Paragraphs 8 and 9 regulate matters concerning the birth and the death of Germans abroad. These provisions set out that consular officials have the power to issue birth and death certificates. They should assist in cases of repatriating remains of Germans. Finally, the act sets out administrative tasks in inheritance matters and certification of different documents (paragraphs 10-17).

It seems important to note that paragraph 5 and the subsequent provisions are all drafted in a way which makes clear that they are addressed to consular officials and not to individuals and establish what the consular officials ‘should’ and ‘may’ do and all entail a wide discretion for the consular officials.

In general, it seems that the wording of the Consular Act distinguishes between consular assistance and consular protection, even though the Act does not provide for a definition of these terms.⁴⁵ The Act uses *‘consular protection’* only in the context of *‘Paragraph 6 - assistance in cases of disaster’* which seems to suggest that consular assistance is a broader concept than consular protection. Moreover, one could take reference to the Vienna Convention of consular relation which seems to offer definitions of these terms. However, it seems that no cases and problems have arisen in this respect.

Concerning the legal protection against acts of consular officials, it should be pointed out that the Basic Law stipulates a right to judicial review of all State actions if these actions interfere with individual rights.⁴⁶ As the consular officials are part of the

⁴³ This provision is then extended to Germans and their descendants who are habitually residents in a foreign State and have the citizenship of that State, if reasons of equity demand such assistance.

⁴⁴ And *‘Non-German family members and decedents if they are living in a common household or were living in a common household for longer time.’*

⁴⁵ In German *‘Hilfe’* and *‘Schutz’*.

⁴⁶ Art. 19 para. 4 of the Basic Law.

federal administration the Federal Act on Administrative Procedure (*Bundesverwaltungsverfahrensgesetz*) and the Act on Procedures before Administrative Courts (*Verwaltungsgerichtsordnung*) are the legal sources which regulate the remedies against decisions and actions of consular officials. It should be noted that these acts do not distinguish between Germans and Non-Germans. Before a complaint can be lodged before the Administrative Court in Berlin (the seat of the federal government), the addressee of the administrative act has⁴⁷ usually to lodge a written complaint to the authority within 1 month after he has been notified.⁴⁸ The authority can either remedy the situation or submit the complaint to the higher authority. The higher authority then has to decide whether the complaint should be rejected or whether it should not. If the complaint is rejected it notifies the complainant in writing and with instructions on how to appeal before the administrative courts.⁴⁹ However, this procedure does not apply to acts of consular officials of the foreign ministry, embassies, permanent representations and consulates. As Paragraph 2 and 3 of the Foreign Service Act (*Gesetz über den Auswärtigen Dienst*)⁵⁰ clarify, these officials are part of the higher federal authority in foreign matters, the Foreign Service (*Auswärtiger Dienst*), which is controlled by the foreign ministry. If administrative acts are enacted by a higher authority, the complaint procedure (*Widerspruchsverfahren*) does not apply according to Paragraph 68 subparagraph 1 No. 1⁵¹ Hence, an action before the Administrative Court in Berlin can be brought directly if the administrative acts was enacted by consular officials of the foreign ministry, embassies, permanent representations and consulates. If the claimant is not satisfied after he has passed through all stages of the administrative justice system, he might still lodge a fundamental rights claim before the *Bundesverfassungsgericht*. However, in this regard it should be recalled that there seems to be no explicit fundamental right to diplomatic and consular protection. Hence, the claim has to be based on other fundamental rights as well. So, a valid claim could be made e.g., on the basis of the principle of non-discrimination (Article 3 of the Basic Law) if the consular officials have offered assistance in other similar cases.

The case law with regard to diplomatic and consular assistance and protection is scarce, as research with regard to cases brought before the competent administrative courts in Berlin show. **Most of the cases concern the question of reimbursement after the assistance and protection has been provided.** Reimbursement is foreseen in cases of assistance and protection according to paragraph 5 subparagraph 5 but can be waived '*if the personal situations of the assisted person or other situations demand this.*' In this regard one might point to a recent case where the *Bundesverwaltungsgericht* (Supreme Administrative Court) has ruled that the German Government could claim reimbursement for a helicopter flight which transported a German hostage from the jungle back to the capital of Colombia.⁵²

⁴⁷ Exceptions for urgent matters, etc. exist.

⁴⁸ And, moreover, correctly informed about his right to file a complaint.

⁴⁹ One might point to the fact that by the time they would reach the court level most complaints might be irrelevant because of the time past. Yet, a declaratory judgment can be sought in these situations if an interest for such a judgment can be claimed. Such an interest might be seen in the danger that this act is repeated or if the claimant plans to file for compensation.

⁵⁰ BGBl. 1990 I p. 1842, lastly amended 5 February 2009.

⁵¹ Or Paragraph 68 subparagraph 2 in conjunction with Paragraph 68 subparagraph 1 No. 1 is a certain positive action of the administration is sought for.

⁵² See BVerwG 7 C 13/08 (28 May 2009). However, it might be interesting note that the German government did not ask for the total costs and expenses incurred for the assistance but only for half of the helicopter flight.

With regard to the cost of acts of the consular officials abroad the Act on Fees for Public Services Abroad (*Auslandskostengesetz*) sets the legal basis and the exact amounts are stipulated in the Bylaw on Fees for Public Services Abroad (*Auslandskostenverordnung*).

2.5. Documentation of consular protection

An official and publicly available documentation on the practice of diplomatic and consular protection which is published by the Foreign Office or the administration does not exist. However, the law review '*Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*' publishes a yearly report on German State practice in international law which also contains particular cases that have been reported with regard to consular practice. Moreover, one might take note of the '*Handbuch der konsularischen Praxis*' by Hecker and Müller-Chorus (Beck, Munich, with regular updates) and the collection of legal documents can be found in *Konsularrecht* by Hoffmann-Glietsch (Beck, Munich, with regular updates).

2.6. Information to citizens on consular protection

Information on consular protection can be found on the web page of the German Foreign Office which has a separate section on general consular assistance⁵³ and assistance and protection in case of emergency.⁵⁴ On the web page on assistance and protection in case of emergency there is also brief information about consular protection of EU citizens and a link to the information provided by the Commission. This information is, however, only available in German and not in English or any other of the official languages of the EU. Moreover, **many of the regional German embassies provide information on their web pages usually only in German.**

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

The Conventions and agreements to which Germany is part have not been amended in order to accommodate the requirements of Art. 20 para. 2(c) and Art. 23 TFEU. **Germany has not itself notified third countries that it would extend consular assistance and protection to citizen of other EU Member States.** It seems, however, that the requirement of Art. 8 of the Vienna Convention on Consular Relations is fulfilled as the EU Presidency notified third countries in 1993 and these countries consented implicitly.

Germany has some sharing arrangements with regard to diplomatic and consular co-locations with other EU Member States⁵⁵ or a common external service provider with regard to visa applications⁵⁶ and even signed on 12 October 2006 an agreement with France which sets out that France issues visas on behalf of Germany in 16 countries.⁵⁷ With regard to consular protection for unrepresented EU-citizens, burden sharing

⁵³ See: <http://www.auswaertiges-amt.de/diplo/de/Laenderinformationen/01-Laender/Konsularisches/Uebersicht.html>

⁵⁴ See: <http://www.konsularinfo.diplo.de/Vertretung/konsularinfo/de/04/Hilfe/Hilfe.html>

⁵⁵ For example, with the UK and the Netherlands in Tanzania, with France and the Netherlands in Nigeria, with the UK and Belgium in Ecuador, with the UK in Iceland.

⁵⁶ For example, in Ghana together with Spain, France or in the Emirates with France, Italy, Slovenia and Lithuania.

⁵⁷ The agreement is, however, not in force yet.

between the German missions and other Member States happens on an informal basis. Moreover, within the same district coordination between the different representations of EU Member States regarding burden-sharing often happens not in the form of general agreements but on a case-by-case basis. In times of crisis Germany considers the concept and guidelines on the “Lead State” to be useful as it allows on the one hand, effective co-ordination and on the other, flexibility with regard to national actions. So that one could say that Germany handles assistance and protection for EU nationals with an undogmatic hands-on approach, depending on the regional or local circumstances and networks with other EU Member States. Finally, it might be pointed out that **Paragraph 5 subparagraph 2 of the Consular Act provides that ‘if reasons of equity demand it assistance can also be given to Non-German family members if they are living in one household or were living in one household for longer time’ while Paragraph 6 of the act foresees the same help as for Germans in the case of disasters. The German Foreign Office indicated that this Paragraph would also be applied in accordance with the principle of non-discrimination; hence it applies also to EU citizens, as long as their Member State does not expressly object to this practice.**⁵⁸ In this context it might also be pointed out that consular assistance and protection does not encompass long-term Non-EU residents and refugees as the Consular Act only covers Germans.

3.2. Statistical data on consular practice

In Germany statistical data regarding consular assistance and protection is not made publicly available. Though it seems as the German embassies transfer certain statistical data back to the German Foreign Office.

4. Consular protection in detail

In Germany diplomatic and consular assistance and protection is offered by Germany with 149 embassies, 12 permanent representations at international organisations, 55 consulates (*Generalkonsulat*) and more than 300 honorary consuls.⁵⁹

So far there seem to be no case law concerning consular assistance or protection with regard to EU nationals in Germany.

As to the *ratione personae* scope of consular assistance and protection one has to point out that the Consular Act formally covers only German nationals and in certain cases their descendants and family members living or who have lived a certain time together with a German national. However, this scope is extended by the circulars of the Foreign Office in order to include EU nationals. The rules regulating consular assistance and protection do not extend to long-term residents and refugees as the Consular Act only covers Germans.

The material scope of consular assistance and protection for Germans is regulated in the Consular Act and the other Regulations mentioned above.⁶⁰ While the material scope for EU nationals seems mainly to be that of Decision 95/553/EC and 96/409/CSFP which are given effect by internal circulars of the Foreign office. Thus, one could conclude that the material scope for Germans is broader than for EU nationals, if one

⁵⁸ Reply as of 17 September 2010.

⁵⁹ See in this regard the list of all German missions abroad at <http://www.auswaertiges-amt.de/diplo/de/Laenderinformationen/DtAuslandsvertretungenListe.pdf>

⁶⁰ See under [Section 2](#).

does not adopt the position that non-discrimination dictates that all options available to Germans should also be available to EU nationals.

With regard to **Honorary Consuls** it has to be pointed out that the competences of a German Honorary Consuls may differ from case to case and that Honorary Consuls are not subject to the obligations pursuant Decision 95/553/EC. Even though they should provide general consular assistance i.e., provide information, not every of the Honorary Consuls has the power to issue emergency travel documents. However, as the Honorary Consuls are not forbidden to provide assistance under Decision 95/553/EC they might also provide assistance to EU nationals. Yet, **the Foreign Office made clear that the superior German missions should be contacted for instructions in due course.**

4.1. Right to consular (and diplomatic) protection

As explained [above](#) (Section 2.4) the German Constitution seems not to provide for an explicit fundamental right of diplomatic and consular assistance and protection. Equally, **a right to diplomatic and consular assistance and protection cannot be found in the Consular Act, as a discretionary element is contained in every provision of that Act.** Only in the case where it would be abusive not to grant assistance or protection, a right to such assistance and protection might come into play. As neither the German law nor the relevant decisions of the EU seems to grant a right to consular assistance or protection, EU nationals would also only in these limited cases have a right to such assistance or protection.⁶¹ **However, it should be pointed out that in praxi such a right would often exist. This is so since, not granting such assistance or protection in cases of emergency like e.g., lost passport, or serious illness etc. would nearly always amount to an abuse of discretion.** The EU nationals must, however, in any case provide proof of his/her nationality either by means of passport/identity cards or if these are not available by means of any other valid proof of nationality, if necessary a verification by his or her Member States' central authorities or the nearest diplomatic or consular mission of his/her Member State.

4.2. Assistance in cases of death / Identifying and repatriating remains

Assistance in cases of death of an EU citizen will be treated as in the case of death of a German citizen abroad. Hence, assistance can be provided in the form of identifying the remains of a dead person, issuing death certificates and the other reports, inform the government or closest consulate or embassy of State of nationality of the dead person, or arranging the repatriation of the remains or their cremation/burial. Financial assistance in these matters would be subject to the strict rule of subsidiarity of public help expressed in Art. 6 of Decision 95/553/EC and would have to be reimbursed.

4.3. Assistance in cases of serious accident or serious illness

In cases of a serious accident or a serious illness the German consular officials might inform the family of the victim but usually inform the other Member State which takes over this task. The consular officials could also assist in organising repatriation measures. With regard to financial support the strict rule of subsidiarity of public help expressed in Art. 6 of Decision 95/553/EC applies and reimbursement is needed.

⁶¹ Though one should bear in mind that if one adopts an interpretation that the EU law would entail a right to consular assistance and protection one would face a situation of reverse discrimination.

4.4. Assistance in cases of arrest or detention

If an unrepresented EU national is arrested or detained, the German consular officials will try to contact the detained person immediately *via* the local authorities. They also inform the Foreign Ministry of the other EU Member State. Moreover, they shall visit the person and make sure that international minimum standards for detention are respected. They can also help with finding legal representation and monitor possible trails to ensure the fairness. German authorities especially support detainees facing a death penalty. If the person detained is not in the position to pay bail the German consular officials shall inform the detainee's State.⁶²

4.5. Assistance to victims of violent crime

The German consular officials help unrepresented EU nationals which are victims of violent crime to obtain legal advice. Moreover, if necessary they could also help with receiving medical treatment. In the case of serious injuries financial support under the strict rule of subsidiarity of public help with reimbursement might be offered. Moreover, one could mention that Germany is signatory to the 1983 European Convention on the Compensation of Victims of Violent Crimes.⁶³

4.6. Relief and repatriation of distressed citizens

The relief and repatriation of distressed Union citizens would be handled as under the Consular Act. Hence, consular officers could assist in facilitating the travelling back to the 'habitual residence or to another place' whenever required. This assistance has to be reimbursed and it is important to point out that, in general, this also applies in the case of evacuation because of war, natural or other disasters.⁶⁴

4.6.1. War, Terrorist Acts, Natural and other Disasters

The German Consular Act, which is according to the circulars also applied to EU citizens if they are unrepresented,⁶⁵ foresees that in cases of natural disasters, war, revolutionary conflicts or other similar instances where the population or parts of the population are endangered consular officials should take the necessary steps to help and protect these citizens. The German missions also have a list of people which live in their area of responsibility to facilitate the help in such cases; to these lists one can subscribe voluntarily. **According to the principle of non-discriminatory unrepresented EU citizens might also be put on the list. Even though there is the general rule that these services, like evacuation, should be reimbursed the practice shows that this claim is often waived.**

4.6.2. Financial advances

With regard to financial advances Decision 95/553/EC in Art. 6 sets out that such advances can only be granted under the strict condition of subsidiarity (if no other sources like one's own account, that of family members, friends or employer is available) and additional approval of the other Member State. Moreover, these advances have to be reimbursed. In practice financial support will be paid to an unrepresented EU national by the German consular officials in close coordination with the other Member

⁶² Schmidt-Bremme in: Hecker/Müller-Chorus, § 9 para. 14 ss.

⁶³ Ratified on 27 November 1996 and entered into force on 1 March 1997.

⁶⁴ See in this regard Paragraph 6 subparagraph 2 of the Consular Act.

⁶⁵ See in this regard also Scheller in: Hecker/Müller-Chorus, § 8 para. 21

State's embassy in Berlin or the closest mission of that Member State abroad. In cases of evacuation etc. reimbursement is arranged according to the 2006 Guidelines on consular protection between the Member States and the Guidelines on the Lead State between the Member States.

4.7. Consular fees

The fees in cases of consular assistance are the same for German nationals and unrepresented EU citizens. Matters regarding fees are regulated by the Act on Fees for Public Services Abroad Act (*Auslandskostengesetz*) which sets the legal basis and the Bylaw on Fees for Public Services Abroad (*Auslandskostenverordnung*) which is concerned with the exact amount. The Act on Fees for Public Services Abroad Act distinguishes between fees and expenses (*Gebühren und Auslagen*), while fees should cover the costs of administrative work; expenses are costs like telephone or postal etc.

Fees are calculated by fix rates, frame rates and sometimes the objective value. The exact amount for certain standard tasks can be found in Annex 1 to the Bylaw on Fees for Public Services Abroad (*Auslandskostenverordnung*). It might be interesting to note that in general expenses which are below 5 Euro and expenses of less than 10 Euro for telephone, fax or postal costs are not charged. Moreover, **the fees and expenses are not charged if the person is in financial distress or these fees and expenses would cause hardship.** However, it is possible that an administrative act is only performed if advanced payment or another security is provided, as Paragraph 16 of the Act on Fees for Public Services Abroad Act states. The fees are usually owed to the *Bundesrepublik Deutschland*, but in the case of Honorary Consuls directly to him/her. The statute of limitations for the claim of fees and expenses is 3 years.

The fee for visas are generally 60 Euro (Schengen visa and national visa) but there are exceptions.

No fee is charged for children under 6 years, students, pupils and accompanying teacher in the case that the voyage has an educational purpose, representatives of NGOs who are younger than 25 and are taking part in an event organised by an NGO, partners of Germans and EU nationals who enjoy the freedom of establishment. With regard to the national visa there is an exception for citizens and their spouses and children of third countries if the citizen receives public funding for the visit. Moreover, there are reductions for people between 6 and 12 years and for citizens from Russia, Ukraine, Serbia, Moldavia, Macedonia, Montenegro, Albania and Bosnia. Lastly one might mention that the consular official can reduce or waive the visa fee if the visit has a humanitarian reason or the visit is promoting cultural, foreign or developmental policy or another relevant public interest.

4.8. Reimbursement of the assisting State

Payment for assistance provided to a German citizen by another EU Member State is reimbursed according to the 2006 Guidelines on Consular Cooperation and in the new guidelines on the Lead State-concept by Germany. Germany may then ask its citizen for reimbursement of these expenditures. However, in this respect no case-law is available and it would be interesting to see whether such a claim could in fact be based on the existing legal framework or whether this would require additional legislation.

4.9. Case studies, in particular problematic practices

There seems to be no specific section where you could find case studies, neither on the web page of the German Foreign Office nor on the web pages of the embassies. **In**

general it seems that with regard to individual cases the German Foreign Office has a tendency towards secrecy as the non-availability to the public of the internal circulars implementing Decision 95/553/EC and 96/409/CSFP might also exemplify. However, the German Foreign Office and the embassies in the different countries always provide answers to frequently asked questions and information about consular protection and visas on their respective web pages.⁶⁶ According to the information of the German Foreign Ministry in the administrative practice of consular protection no major problems arise. Moreover, **cases of consular assistance and protection usually involve matters of urgency; hence, it seems that not much room is left for legal disputes before the courts.** This is also shown in the relevant case law. First, there are relatively few cases and, second, these few cases are either related to questions of entitlement to social welfare payments for Germans abroad or the reimbursement claims against Germans who received consular assistance or protection abroad.

5. Emergency travel document (ETD)

For Germans who lost their passport abroad consular officials will issue a '*Reiseausweis als Passersatz*' (travel document as substitute to the passport) pursuant Paragraph 2 subparagraph 1 No. 11 of the Implementing Bylaw for the Passports Act (*Durchführungsverordnung zum Passgesetz*) or if there is more time and the passport authorities back in Germany are contacted a temporary passport may be issued. With regard to EU citizen the consular officials will also issue a '*Reiseausweis als Passersatz*' and not the standard Emergency Travel Document referred to in Decision 96/409/CSFP. This document is considered to be unsafe compared to the German '*Reiseausweis als Passersatz*' with regard to forgery.⁶⁷ The conditions for issuing this document are those named in Decision 96/409/CSFP. **According to the Foreign Office no problems with the issuing of '*Reiseausweis als Passersatz*' to EU citizens have occurred in practice.**⁶⁸

6. Relevant diplomatic protection

The German Constitution does not confer an explicit fundamental right to diplomatic protection nor does the Consular Act provide for such a right instead a wide discretion is offered to the State with regard to the question whether to provide such protection. However, in certain cases such diplomatic protection might still be necessary as not offering such diplomatic protection would violate other fundamental rights, e.g., the right of non-discrimination of Article 3 of the Basic Law as diplomatic protection was offered in a similar situation. The basis for such diplomatic protection would also be the Consular Act and for EU nationals the Consular Act in conjunction with the internal circulars of the Foreign Office. **The consular act seems not only to address consular protection, as it sets out that the consular officials can take the necessary measures so that diplomatic protection under the Consular Act seems also available.** According to the principle of non-discrimination this form of

⁶⁶ While the Foreign Office seems to have the more general information the individual embassies provide more details/the practical side with regard to actual consular protection.

⁶⁷ Wagner in: Hecker/Müller-Chorus, § 7 para. 10.

⁶⁸ Reply of the Foreign Office from 17 September 2010.

protection would not only involve Germans and their Non-German family members⁶⁹ but also EU citizens and their Non-EU family members.

7. Exercise of consular functions for expats

In general the services provided for expats are the same as those for other Germans. However, certain forms of assistance might be more relevant with regard to expats which are considered in the following. According to paragraph 10 and the following paragraphs consular officials may have a function equivalent to a notary, in this regard they may certify the origin of goods, replace the notary in matters relating to the purchase of real estate in Germany, certify the last will, and certify German and foreign documents, etc.. With regard to passports, certain consulates are appointed by the German Foreign Ministry as passport authorities for Germans living abroad. With regard to election for the Parliament (Bundestag) and the EU Parliament, Germans abroad are allowed to vote since 1985 and 1994 respectively. The consular officials are involved in these elections by making them public, in the registration of voters and if needed help with regard to the transport of ballot papers.

8. Summary

Germany is part of many of the most important international treaties such as the Vienna Conventions on consular and diplomatic relations. The multilateral but also the bilateral agreements have not been expressly amended in order to cover the extension of diplomatic and consular protection to EU nationals. However, as the Presidency of the Union informed all third countries of this extension and the latter accepted implicitly, one could say that these agreements also cover EU nationals.

From a theoretical point of view it should be pointed out that neither the German Constitution foresees an explicit fundamental right to diplomatic or consular assistance and protection nor does the relevant Consular Act provide for a right to diplomatic or consular assistance and protection. Instead the consular officials have wide discretion with regard to the question if and how to grant diplomatic or consular assistance and protection. However, from a practical point of view such a right seems to exist in the most cases of emergency like e.g., lost passports, or serious illnesses etc., since it would nearly always amount to an abuse of discretion not granting such protection and assistance in these cases. However, discretion is left with regard to question of how this protection and assistance is provided in the specific situation.

With regard to the provision of diplomatic or consular assistance and protection to EU citizens it has to be pointed out that the obligations under the Treaty on the Functioning of the European Union and under Decision 95/553/EC and 96/409/CSFP are not implemented by means of a legislative act. Instead the Foreign Office has chosen to adopt internal circulars and guidelines (*Rundschreiben/Runderlass*) in order to guide the consular officials. These circulars are considered internal and are not published or made available in any other form to the public. Moreover, these circulars do not directly affect the legal position of individuals. One might question this practice in terms of transparency and legal certainty. However, according to the Foreign Office these circulars ensure that the same treatment is given to EU nationals compared to German nationals. Hence, assistance and protection for unrepresented EU citizens is available in all the situations stipulated in Decision 95/553/EC. Moreover, it is important to point

⁶⁹ With respect to Non-German family members see above under [Section 2.4.](#) and for non-German and non-EU family members above [Section 3.1.](#)

out that the German consular officers would, therefore, also provide assistance to Non-EU family members as well as to Non-German family members under the conditions stipulated by the Consular Act. With regard to the Decision 96/409/CSFP, it might be pointed out that Germany does not issue the Emergency Travel Document as this is considered to be unsafe so that EU nationals as well as Germans are issued a ‘*Reiseausweis als Passersatz*’ (travel document as substitute to the passport). In general the German Foreign Office did not encounter any major difficulties with regard to the provision of diplomatic or consular assistance and protection to unrepresented EU citizens. Finally, it might be highlighted that with regard to assistance provided by another Member State to a German citizen it is questionable whether the German Government could claim reimbursement for such consular assistance, as there is no direct legal basis for such a claim and it is doubtful whether the Consular Act can act as a surrogate in such cases.

The German Foreign Office and the relevant embassies provide on their web pages information on general consular assistance and on assistance and protection in case of emergency. One can also find brief information about consular protection for unrepresented EU citizens and a link to the Commission’s web page. However, all these materials are only available in German and not in any other of the official languages of the EU. This might not be too helpful for an unrepresented EU citizen looking for diplomatic or consular assistance and protection from a German mission abroad.

9. List of important documents

International Treaties and related national instruments

1.

Title: Vienna Convention on Diplomatic Relations

Publication reference: BGBl. 1964 II p. 959.

2.

Title: Vienna Convention on Consular Relations

Publication reference: BGBl. 1969 II p. 1589.

3.

Title: Optional Protocol to the Vienna Convention on Consular Relations about Nationality Acquisition

Publication reference: BGBl. 1969 II, p. 1675.

4.

Title: Optional Protocol concerning the Compulsory Settlement of Disputes

Publication reference: BGBl. 1969 II p. 1675.

5.

Title: International Agreement on the Transfer of Corpses of 10 February 1937

Publication reference: RGBl. 1938 II p. 199.

6.

Title: European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983

Publication reference: BGBl. 1996 II p. 1121.

National legislation

7.

Title: Consular Act (Gesetz über die Konsularbeamten, ihre Aufgaben und Befugnisse of 11 September 1974)

Publication reference: BGBl. 1974 I p. 2317, lastly amended on 17 December 2008

8.

Title: Act on Fees for Public Services Abroad (Auslandskostengesetz of 21. February 1978)

Publication reference: BGBl. 1978 I p. 301, lastly amended 5 May 2004.

9.

Title: By-law on Fees for Public Services Abroad (Auslandskostenverordnung)

Publication reference: BGBl. 2001 I p. 4161, lastly amended 21 December 2007.

Websites, reports

10.

Title: Konsularischer Service (Information about consular services offered)

Publication reference: <http://www.auswaertiges-amt.de/diplo/de/Laenderinformationen/01-Laender/Konsularisches/Uebersicht.html>

11.

Title: Aktuelle Konsularinformationen für deutsche Staatsangehörige (Current consular information)

Publication reference: <http://www.konsularinfo.diplo.de/Vertretung/konsularinfo/de/Startseite.html>

12.

Title: Hilfe in Notfällen (Consular assistance and protection in case of emergency)

Publication reference:

http://www.konsularinfo.diplo.de/Vertretung/konsularinfo/de/04/Hilfe/_Hilfe.html

13.

Title: Verzeichnis der Vertretungen der Bundesrepublik Deutschland im Ausland (List of German missions abroad)

Publication reference: [http://www.auswaertiges-](http://www.auswaertiges-amt.de/diplo/de/Laenderinformationen/DtAuslandsvertretungenListe.pdf)

[amt.de/diplo/de/Laenderinformationen/DtAuslandsvertretungenListe.pdf](http://www.auswaertiges-amt.de/diplo/de/Laenderinformationen/DtAuslandsvertretungenListe.pdf)

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Greece - Ελλάδα (EL)

1. Introduction

This Report contains the legal framework and national practice of Greece on consular and diplomatic protection as of 30 August 2010.

The basis of the Report is: consular treaty law and practice, relevant legislation, the website of the Hellenic Ministry of Foreign Affairs¹ and, the most important source, interviews with officials from this Ministry and related internal documents.

1.1. Terminology - National acronyms and definitions

ΥΠΕΞ (Υπουργείο των Εξωτερικών): Hellenic Ministry of Foreign Affairs.

Υπηρεσίες για τους πολίτες – προξενικές υποθέσεις: Citizens' Services – Consular Affairs), Hellenic Ministry of Foreign Affairs.

Ε3 Διεύθυνση Δικαστικών και Διοικητικών Υποθέσεων: E3 Directorate for Judicial and Administrative Affairs; Directorate of the Ministry responsible for citizens support. This Directorate monitors and coordinates the mission allotted to the diplomatic and consular authorities concerning issues under its authority.

Μονάδα Διαχείρισης Κρίσεων: Crisis Management Unit, special unit of the Ministry which addresses and deals with emergency situations of humanitarian and consular nature, such as crises that are the result of conflicts, terrorist attacks, natural disasters or accidents. Coordinates the work of the E3 Directorate for Judicial and Administrative Affairs.²

ΦΕΚ (Φύλλο της Εφημερίδας της Κυβερνήσεως): Government Gazette, FEK.

Νόμος: Law.

Νομοθετικό διάταγμα: Legislative Decree.

2. Legal framework

Greece's legal framework consists of contracting party to multilateral treaties, bilateral treaties on consular relations, obligations under EU treaties, implementing legislation, legislation on the organization of the Ministry of Foreign Affairs, State policy and practice.

So far, no basic right to consular or diplomatic protection has been established.

2.1. International law

Greece is/is not a Party to the following multilateral conventions:

- Vienna Convention on Consular Relations: party since 13 November 1975 (Law 90/1975, Government Gazette A 150/1975). No reservations have been made.
 - ο Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes: not party

¹ www.mfa.gr

² <http://www.mfa.gr/www.mfa.gr/en-US/The+Ministry/Structure/Crisis+Management+Unit>

- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80): party since 26 April 1983 (Law 1315/1983, Government Gazette A 3/1983)

Greece is not a Party to other multilateral international treaties on consular protection.

Greece has concluded about 20 bilateral treaties on consular protection. Some older treaties on Consular Relations, Friendship and Trade also exist (with Belgium, United States, France, Italy, Spain, Portugal).

An agreement on consular representation of the Republic of Cyprus in Saudi Arabia in relation to the granting of visas to Saudi Arabian nationals and nationals of third countries residing in Saudi Arabia exists (Agreement between the Hellenic Republic and the Republic of Cyprus, Law 3324/2005, Government Gazette A 67/2005).

No formal agreements on consular and diplomatic assistance exist.

No informal bilateral agreements on consular assistance or protection exist.

2.2. Transposition of international law into national law

According to Article 28 of the Hellenic Constitution of 1975/1982:

“The generally accepted rules of international law as well as international treaties, once ratified by law and entered into force according to their specific terms and conditions, constitute an integral part of the domestic legal order and supersede any other contrary statutory provision, The application of international conventions to aliens is always subject to the condition of reciprocity”.

According to this provision, “generally accepted rules of international law”, in other words, **international customs, become automatically part of the law of the land.** On the other hand, **international treaties are incorporated into the Greek legal order through the formal process of ratification by Parliament. Once ratified and entered into force according to its terms and conditions, an international treaty acquires greater force than that of a law adopted in Parliament.** Thus, it cannot be amended but by a rule of the same nature brought into the Greek domestic law in the same manner, namely by a subsequent customary or treaty provision. International law is thus placed in the Greek legal hierarchy above statutes adopted by Parliament and only inferior to constitutional provisions. As a result of the integration of international law rules within the domestic legal order, both the administrative authorities and courts are required to apply international law rules as part of the law of the land³.

2.3. Implementation of European law into national law

The EC Treaties have also been incorporated into the Greek domestic order through the process of ratification by law. Concerning secondary legislation, EC Regulations are directly applicable within the domestic legal order, while directives are usually incorporated through implementing measures.

Decision 95/553/EC was integrated into Greek law under Law No. 2964/2001⁴. According to Article 2 of the said law, the protection of EU citizens according to Article 20 EC is included among the duties of consular missions. **Decision 96/409/CFSP** was

³ On the integration of international and European law into the Greek legal order, see E. Roucouas, Grèce, in P.-M. Eisemann (ed.), *The Integration of International and European Law into the National Legal Order. A Study of the Practice in Europe*, The Hague/London/Boston, Kluwer Law International, 1996, pp. 287-315.

⁴ Official Gazette A, 280, Law No 2964/2001.

transposed into the Greek legal order by the process of ratification by law (Law 2968/2001, Government Gazette FEK A 280/18.12.2001).

2.4. National law

The organization of diplomatic and consular missions and the duties of diplomatic and consular services are provided for by a law, the Code on the Organization of the Ministry of Foreign Affairs, governing the missions and competences of the Ministry of Foreign Affairs (Law 3566/2007, Government Gazette, FEK A 117/5.6.2007).

No other general internal guideline for consuls and diplomats has been enacted. Internal circulars regulating specific issues are enacted, but are *not* publicly available.

A national consular law or law on diplomatic protection does not exist.

2.5. Documentation of consular protection

Greek practice on international law, including diplomatic and consular law, is not compiled officially. Some elements of practice in international law can be found in the *Revue Hellénique de droit international* published by the Hellenic Institute of International and Foreign Law, in particular, under the headings of “*Législation*” and “*Actes et documents*”, where references to consular treaties can be found.

2.6. Information to citizens on consular protection

Information to citizens on consular protection is mainly disseminated through the website of the Hellenic Ministry of Foreign Affairs. Diplomatic and consular missions abroad also provide information upon request, or on their websites, where these exist.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Greek bilateral agreements with third countries do not include provisions protecting Union citizens working and living in third countries.

Greece has not informed third countries of the practice of extending protection to Union citizens (Art 8 Vienna Convention on Consular Protection).

Greek bilateral agreements with third countries do not include provisions extending consular protection to Union citizens’ family members who are not nationals of a Member State.

In general, Greece does not extend consular protection to Union citizens’ family members who are not nationals of a Member State. **Exceptions exist in case of evacuations.** Until now, Greece has not informed third countries of this practice.

Greece has not started negotiations concerning agreements with third countries including provisions protecting Union citizens working and living in third countries.

Greece has not started negotiations concerning agreements with third countries including provisions which extend consular protection to Union citizens’ family members who are not nationals of a Member State.

3.2. Statistical data on consular practice

Greek consular missions offer extensive consular services to Greek citizens and persons of Greek descent. Examples of such assistance include emergency situations (marine

accidents, illness, death) assistance to repatriation, notarisations, legal protection. Furthermore, Greece has provided assistance to Union citizens, but practice is not extensive. **No comprehensive statistical data are available.**

Consular protection for EU citizens: no statistical data available.

Consular protection for Greek citizens received from other Member States' embassies and third countries in the last three years: no data available.

4. Consular protection in detail

In Greece, the **Vienna Convention on Consular Relations**, which has been incorporated into the Greek legal order through the process of ratification by law, constitutes the legal basis for consular protection.

The European Treaties have also been incorporated into the Greek legal order by ratification. European directives are directly applicable.

The relevant Decisions (Decision 95/553/EC and Decision 96/409/CFSP) have been transposed into the Greek legal order through ratification by law (**Law 2986/2001**, Government Gazette FEK A 280/18.12.2001). **This law sets out in Articles 2-6 the duties of consular missions resulting from Article 23 TFEU (ex-Article 20 EC Treaty).** In particular, Article 2 provides that consular missions henceforth undertake a duty to protect EU citizens in accordance with Article 23 TFEU. According to Article 4, the Hellenic MFA takes steps to assure that EU citizens are informed of their rights resulting from the relevant EC Decisions by local consular authorities. Also, Article 6 provides for the functioning of a consular service for the protection of Greek and EU citizens in situations of crisis. Finally, Article 3 contains implementing measures for the emergency travel documents.

On a national level, diplomatic and consular duties are set out in detail by a law (code) governing the missions and competences of the Ministry of Foreign Affairs (Law 3566/2007, Government Gazette A 117/5-6-2007). This law has replaced a former code on the missions and competences of the MFA (Law 2594/1998, Government Gazette FEK A 62/1998), and any references to this previous law should be replaced by the new code in force.

Relevant case law on the rules for consular protection does not exist.⁵

Consular representation and functions are based on the above sources, as well as on bilateral treaties and agreements on consular representation. Generally, **consular services** can be grouped into three main areas: **(i)** administrative services (maintenance of consular registers, issuance of administrative documents, travel documents, personal status of Greeks abroad, matters relating to military obligations of Greek citizens residing abroad, etc.), **(ii)** judicial matters (inheritance, estates, extradition procedures, etc.), **(iii)** maritime affairs (protection of Greek seamen and shipwrecked persons).

The network for consular services consists of:

- a central service in the Hellenic Ministry of Foreign Affairs (the E3 Directorate, whose mission is to monitor and coordinate the mission allotted to the diplomatic and consular authorities concerning issues under its authority). This service is open to the public three days a week.

- Greek representations abroad (embassies, consulates, honorary consuls). A list of Greek representations abroad can be found on the website of the Ministry.

Honorary consuls are not competent to issue travel documents.

⁵ Existing case-law mainly concerns diplomatic and consular immunities and privileges.

So far, Greece has not yet assumed the role of “Lead State”.

No practice exists as of yet in the field of agreements with other member States on consular protection in particular of EU nationals. Greece’s obligations basically derive from the relevant EC decisions which have been transposed into Greek legal order (Law 2986/2001, referred to above).

4.1. Right to consular (and diplomatic) protection

In Greece, no right to consular (and diplomatic) protection exists.

Consular (and diplomatic) protection is provided for Greek and EU nationals, on the basis of international obligations (treaties), as well as administrative practice.

In general, consular protection is not extended to family members who are not nationals of a Member State. However, **Greece examines under a positive attitude the possibility of granting consular assistance to non Greek citizens, in particular to family members of Greek citizens who do not have Greek nationality.**

Consular protection is not extended to other categories (e.g., recognized refugees, stateless persons or persons with resident permits).

4.2. Assistance in cases of death

Greek diplomatic or consular missions **inform** the national authorities which contact the next-of-kin.

Greek diplomatic or consular missions – if requested by the next-of-kin – **assist** in arranging for the body, remains or ashes of the deceased to be repatriated to the home country.

4.3. Assistance in cases of serious accident or serious illness

Greek diplomatic or consular missions **inform** next-of-kin, **arrange visits or give advice** on reputable clinics and doctors.

A medical evacuation is subject to the consent of the national authority and sufficient financial resources.

4.4. Assistance in cases of arrest or detention

Greek diplomatic or consular missions inform the competent national authorities. Consular assistance aiming at finding appropriate legal advice and assuring a fair trial according to the rule of law will be provided to the person in need (if he/she so requires).

Greek diplomatic or consular missions will observe the respect of international law (treatment of foreigners) and domestic law.

4.5. Assistance to victims of violent crime

Greek diplomatic or consular missions **inform** about medical assistance and legal advice. Support is granted only in exceptional cases.

4.6. Relief and repatriation of distressed citizens

Greek diplomatic or consular missions provide advice and assistance.

Evacuations are organized in case of urgent necessity (e.g., Tsunami 2004, Lebanon 2006). **Greece has not yet assumed a role of “Lead-State”.**

4.6.1. Natural disasters

Greek consular and diplomatic authorities immediately **establish close contacts** with local authorities and with citizens in order to provide support, contact family members, and, if required, organize evacuations as soon as possible

Tsunami December 2004:

A Crisis Management Team was immediately set up in the Hellenic Ministry of Foreign Affairs, with a purpose to coordinate response and assist all those in need of assistance, such as relatives of Greek nationals traveling in the affected areas, as well as citizens of other countries (EU members and others) residing in Greece who had relatives in the affected areas all of who were in need of information from the disaster areas. A call center was established to facilitate exchange of information with the families of persons in the disaster area.

Evacuation was organized by Greek means of transport. A Greek civil aircraft was the first EU aircraft which landed in Phuket on 27.12.2004 at 17.00 local time. About 200 Greek citizens and 6 EU citizens were evacuated. **Reimbursement was not asked.** There were five Greek victims from this disaster.

4.6.2. Terrorist acts

In case of a terrorist attack, Greek consular and diplomatic authorities maintain **contact with local authorities** in order to provide support to citizens if affected (no Greek victims: London 2005 or Sharm el-Sheik 2005).

4.6.3. Pandemics

Greek consular and diplomatic authorities **maintain contact with local authorities** and provide information to the Hellenic Ministry of Health and the Ministry of the Interior on incidents recorded. Information is also provided to Member States of the Union on incidents recorded in Greece. Consular and diplomatic authorities provide support to citizens if involved.

4.6.4. Military conflicts

Greek consular and diplomatic authorities **maintain contact with local authorities** in order to provide support to citizens if involved. **Evacuations** are organized immediately, if necessary.

Lebanon conflict - July/August 2006:

Co-operation between EU Member States has been exemplary. Greece evacuated 439 Greeks and 2217 non-Greek citizens, including EU citizens, with Greek means of transport. **Reimbursement of costs was not asked** from Greek citizens or citizens of other countries, including EU Member States citizens. Greece also assisted in the transport of consular officers (Danish) from Cyprus to Beirut to assist in the evacuation process.

Chad conflict - February 2008:

No Greek casualties.

Georgia conflict - August 2008:

No Greek casualties.

4.6.5. Financial advances

Financial advances and repatriation to the home country will be provided only at utmost urgency. **Financial aid in repatriation is given by consular missions, subject to authorization by the Ministry of Foreign Affairs.** Ships with a Greek flag are obliged to repatriate Greek citizens free of charge.

Financial advances to EU citizens: So far, a standard practice has not been established. In general, consent of the other Member State is required for financial advances; e.g., a deposit or firm commitment for recovery of costs is obligatory.

4.7. Consular fees

Consular fees are based on the relevant provisions of the Code on the Organization of the Ministry of Foreign affairs (Law 3566/2007, Art. 162). **Any financial aid granted by consular missions is subject to authorization by the Ministry of Foreign Affairs.**

4.8. Reimbursement of the assisting State

So far, no standard practice has been established. In the Lebanon crisis (2006), **reimbursement of costs was not asked** from Greek citizens or citizens of other countries, including EU Member States citizens.

4.9. Case studies, in particular problematic practices

No particular problematic practices have been signalled. However, the new ETDs have not yet been issued (see below, Section 5).

5. Emergency travel document (ETD)

Greek consular missions are equipped with ETDs. However, due to technical reasons, the new ETDs have not yet been issued. They are expected to circulate to consular missions within the next months.

Honorary consuls are not competent to issue travel documents.

6. Relevant diplomatic protection

In Greece, no right to consular (and diplomatic) protection exists. Consular (and diplomatic) protection is provided only for Greek and EU-nationals, based on international obligations and administrative practice. In general, consular (and diplomatic) protection is not extended to family members who are not nationals of a Member State. However, Greece examines under a positive attitude the possibility of granting consular assistance to non Greek citizens, in particular to family members of Greek citizens who do not have Greek nationality.

7. Exercise of consular functions for expats

Greece has a large number of expatriates residing abroad, and accordingly there is a strong focus on providing assistance to this category. Greek representations provide assistance for acts as notary and civil registrar and in capacities of a similar kind; certain functions of an administrative nature, transmitting judicial and extrajudicial documents, issuance of passports, certificates of emigration, matters pertaining to military obligations, as well as repatriation.

8. Summary

Greece is a contracting party to the most important international treaties on consular relations and has concluded a number of bilateral treaties on consular relations. Further co-operation is based on common cultural background but also diplomatic and consular networks.

Assistance to EU citizens is provided according to Article 23 TFEU. The European decisions have been transposed into the Greek legal order by law which contains implementing provisions. So far, some but not extensive practice exists. For evacuation operations undertaken in international conflicts, the *ad hoc* co-operation between EU Member States has proven to be very helpful and effective.

The legal framework has not been extended by bilateral arrangements to cover the delegation of consular or diplomatic protection according to Article 23 TFEU or support for family members not nationals of a Member State.

9. List of important documents

International treaties and related national instruments

1.

Title: Σύμβασις της Βιέννης περί προξενικών σχέσεων

Publication reference: Law 90/1975, Government Gazette (FEK A 150/1975)

Entry into force: 13/11/1975

English title: Vienna Convention on Consular Relations, Vienna, 24 April 1963

2.

Title: Ευρωπαϊκή Σύμβαση για τα προξενικά καθήκοντα

Publication reference: Law 1363/1983, Government Gazette (FEK A 79/1983)

Entry into force: 25.8.1983

English title: European Convention on Consular Functions, 11 December 1967 (ETS 61)

3.

Title: Ευρωπαϊκή Συμφωνία για τη μεταφορά ανθρωπίνων σωρών

Publication reference: Law 1315/1983, Government Gazette (FEK A 3/1983)

Entry into force: 7.4.1983

English title: European Agreement on the Transfer of Corpses, 1973 (ETS 80)

4.

Title: Συμφωνία μεταξύ της Ελληνικής Δημοκρατίας και της Δημοκρατίας του Αζερμπαϊτζάν για την άσκηση προξενικών καθηκόντων εκ μέρους των προξενικών γραφείων των πρεσβειών των δύο χωρών, 11.4.1997

Publication reference: Law 2611/1998, Government Gazette (FEK A 111/1998)

Entry into force: 21.7.1998

English title: Agreement between the Hellenic Republic and the Republic of Azerbaijan regarding the exercise of consular functions by the Consular Offices of the Embassies of the two countries

Short summary: Exercise of consular functions by consular offices of Embassies of two countries

5.

Title: Προξενική Σύμβαση μεταξύ της Ελληνικής Δημοκρατίας και της Δημοκρατίας της Αλβανίας, 22.6.1992

Publication reference: Law 2106/1992, Government Gazette (FEK A 202/1992)

Entry into force: 13.3.1993

English title: Consular Convention between the Hellenic Republic and the Republic of Albania

Short summary: Establishment of consular missions, duties, privileges and immunities

6.

Title: Προξενική Σύμβαση μεταξύ της Ελληνικής Δημοκρατίας και της Δημοκρατίας της Αρμενίας, 9.4.1997

Publication reference: Law 2570/1998, Government Gazette (FEK A 10/1998)

Entry into force: 9.3.2000

English title: Consular Convention between the Hellenic Republic and the Republic of Armenia

Short summary: Detailed regulatory framework on establishment of consular posts, consular functions, privileges and immunities

7.

Title: Προξενική Σύμβασις μεταξύ Ελλάδος και Λαϊκής Δημοκρατίας της Βουλγαρίας, 31.5.1973

Publication reference: Legislative Decree 359/1974, Government Gazette (FEK A 121/1974)

Entry into force: 23.1.1975

French title: Convention consulaire entre la Grèce et la République populaire de Bulgarie

Short summary: Establishment of consular missions, duties, privileges and immunities

8.

Title: Προξενική Σύμβασις μεταξύ της Ελλάδας και της Μεγάλης Βρεταννίας, 17.4.1953

Publication reference: Legislative Decree 2619/1953, Government Gazette (FEK A 310/1953)

Entry into force: 14.2.1954

English title: Consular Convention between the United Kingdom and the Kingdom of Greece

Short summary: Consular functions, privileges and immunities

9.

Title: Περί εγκρίσεως της δι' ανταλλαγής των από 20.2.1980 επιστολών συναφθείσης Συμφωνίας περί καταργήσεως του άρθρου 27 της ελληνοβρεταννικής Προξενικής Συμβάσεως του 1953

Publication reference: Government Gazette (FEK A 136/1980)

Entry into force: 20.2.1980

English title: Exchange of letters on the abolishment of article 27 of the Consular Convention between the United Kingdom and Greece

Short summary: Abolishment of Article 27 on mutual assistance in the recovery of merchant seamen deserters

10.

Title: Κύπρος: Προξενική Σύμβασις μεταξύ της Ελλάδας και της Μεγάλης Βρεταννίας, 17.4.1953, επεκτάθηκε στην Κύπρο 15.4.1954

Publication reference: Legislative Decree 2619/1953, Government Gazette (FEK A 310/1953)

Entry into force: 15.4.1954

English title: Cyprus: Consular Convention between Greece and Great Britain 17.4.1953, extended to Cyprus, 15.4.1954

11.

Title: Συμφωνία μεταξύ της Ελληνικής Δημοκρατίας και της Κυπριακής δημοκρατίας για εκπροσώπηση της Κυπριακής Δημοκρατίας στη Σαουδική Αραβία αναφορικά με τη χορήγηση κυπριακών θεωρήσεων, 4.8.2004

Publication reference: Law 3324/2005, Government Gazette (FEK A 67/2005)

Entry into force: 2005

English title: Agreement between the Hellenic Republic and the Republic of Cyprus on the representation of the Republic of Cyprus in Saudi Arabia relating to the granting of cypriot visas

Short summary: Representation of Cyprus in Saudi Arabia by Greek consular authorities relating to granting of visas to citizens of third countries

12.

Title: α) Συμφωνία μεταξύ της Ελληνικής Δημοκρατίας και της Δημοκρατίας της Γεωργίας σχετικά με την άσκηση των προξενικών καθηκόντων από τα προξενικά γραφεία των Πρεσβειών των δύο χωρών, 8.11.1994

Publication reference: Law 2409/1996, Government Gazette (FEK A 120/1996)

Entry into force: 3.9.1996

English title: Agreement between the Hellenic Republic and the Republic of Georgia regarding the exercise of consular functions by the consular offices of the Embassies of the two countries

Short summary: Exercise of consular functions by consular offices of Embassies of the two countries

13.

Title: Συμφωνία μεταξύ της Ελληνικής Δημοκρατίας και της Δημοκρατίας της Γεωργίας σχετικά με την ίδρυση προξενικών αρχών, 22.1.2007

Publication reference: β) Law 3564/2007, Government Gazette (FEK A 111/2007)

Entry into force: 7.6.2007

English title: Agreement between the Hellenic Republic and the Republic of Georgia regarding the establishment of consular posts

Short summary: Establishment of consular posts

14.

Title: Προξενική Σύμβασις μεταξύ της Ελληνικής Δημοκρατίας και της Ομοσπόνδου Σοσιαλιστικής Δημοκρατίας της Γιουγκοσλαβίας, 17.12.1974

Publication reference: Law 217/1975, Government Gazette (FEK A 259/1975); Government Gazette (FEK A 68/1998) [succession: Federal Republic of Yugoslavia]; Government Gazette (FEK A 249/1995) [succession: Croatia]; Government Gazette (FEK A 24/1995) [succession: Slovenia]

Entry into force: 5.5.1976

French title: Convention consulaire entre la République hellénique et la République socialiste fédérative de Yougoslavie

Short summary: Establishment of consular posts, duties, privileges and immunities

15.

Title: Σύμβασις μεταξύ Ελλάδας και Λιβάνου Προξενικής, Ναυτιλίας, Εμπορικών και Αστικών Δικαιωμάτων και Εγκαταστάσεως, 6.10.1948

Publication reference: Legislative Decree 1273/1949, Government Gazette (FEK A 292/1949)

Entry into force: 28.8.1950

French title: Traité consulaire, de navigation, de droits civils et commerciaux et d'établissement entre la Grèce et le Liban

Short summary: Establishment and consular relations

16.

Title: Προξενική Σύμβαση μεταξύ της Ελληνικής Δημοκρατίας και της Δημοκρατίας της Μολδαβίας, 21.10.1998

Publication reference: Law 2760/1999, Government Gazette (FEK A 257/1999)

Entry into force: 1.10.2005

French title: Convention consulaire entre la République hellénique et la République de Moldova

Short summary: Detailed regulatory framework on consular relations in the spirit of the 1963 Vienna Convention

17.

Title: Προξενική Σύμβασις μεταξύ της Ελληνικής Δημοκρατίας και της Ουγγρικής Λαϊκής Δημοκρατίας, 18.3.1977

Publication reference: Law 869/1979, Government Gazette (FEK A 37/1979)

Entry into force: 26.5.1979

French title: Convention consulaire entre la République hellénique et la République populaire hongroise

18.

Title: Πρωτόκολλο μεταξύ της Ελληνικής Δημοκρατίας και της Ουκρανίας για τις προξενικές σχέσεις, 15.12.1997

Publication reference: Law 2728/1999, Government Gazette (FEK A 124/1999)

Entry into force: 16.9.1999

English title: Protocol on Consular Relations between the Government of the Hellenic Republic and the Government of Ukraine

Short summary: Agreement to maintain in force the Consular Convention between the Hellenic Republic and the USSR of 6.7.1978 and annexed Protocol in the relations between Greece and the Ukraine

19.

Title: Προξενική Σύμβασις μεταξύ της Ελληνικής Δημοκρατίας και της Ενώσεως Σοβιετικών Σοσιαλιστικών Δημοκρατιών, 6.7.1978

English title: Consular Convention between the Hellenic Republic and the Union of Soviet Socialist Republics

20.

Title: Πρωτόκολλον εις την Προξενικήν Σύμβασιν μεταξύ της Ελληνικής Δημοκρατίας και της Ενώσεως Σοβιετικών Σοσιαλιστικών Δημοκρατιών, 6.7.1978

English title: Protocol to the Consular Convention between the Hellenic Republic and the Union of Soviet Socialist Republics

Publication reference: Law 934/1979, Government Gazette (FEK A 145/1979); Government Gazette (FEK A 4/1996) [succession: Russia]

Entry into force: 22.12.1980

21.

Title: Προξενική Σύμβαση μεταξύ της Ελληνικής Δημοκρατίας και της Σοσιαλιστικής Δημοκρατίας της Τσεχοσλοβακίας, 20.10.1980

Publication reference: Law 1461/1984, Government Gazette (FEK A 91/1984); Government Gazette (FEK A 138/1995) [succession: Slovakia]; Government Gazette (FEK A 23/1995) [succession: Czech Republic]

Entry into force: 3.8.1984

English title: Consular Convention between the Hellenic Republic and the Czechoslovak Socialist Republic

22.

Title: Προξενική Σύμβαση μεταξύ της Ελληνικής Δημοκρατίας και της Δημοκρατίας της Τυνησίας, 17.7.1996

Publication reference: Law 2553/1997, Government Gazette (FEK A 267/1997)

Entry into force: 1.2.1999

French title: Convention consulaire entre la République hellénique et la République tunisienne

23.

Title: Προξενική Σύμβαση μεταξύ της Ελληνικής Δημοκρατίας και της Δημοκρατίας του Ουζμπεκιστάν, 2.3.1999

Publication reference: Law 2795/2000, Government Gazette (FEK A 35/2000)

Entry into force: 28.6.2001

English title: Consular Convention between the Hellenic Republic and the Republic of Uzbekistan

Short summary: Detailed convention on consular relations, refers to Vienna Convention on Consular Relations of 1963

24.

Title: Προξενική Σύμβασις μεταξύ της Ελληνικής Δημοκρατίας και της Λαϊκής Δημοκρατίας της Πολωνίας, 30.8.1977

Publication reference: Law 838/1978, Government Gazette (FEK A 226/1978)

Entry into force: 29.4.1979

French title: Convention consulaire entre la République hellénique et la République Populaire de Pologne

25.

Title: Προξενική Σύμβαση μεταξύ της Ελλάδας και της Σοσιαλιστικής Δημοκρατίας της Ρουμανίας, 22.5.1972

Publication reference: Legislative Decree 426/1974, Government Gazette, (FEK A 148/1974)

Entry into force: 28.9.1974

English title: Consular Convention between the Kingdom of Greece and the Socialist Republic of Romania

26.

Title: Συμφωνία τροποποίησης της Προξενικής Σύμβασης μεταξύ της Ελλάδας και της Σοσιαλιστικής Δημοκρατίας της Ρουμανίας, 15.12.2006, 2.7.2007

Publication reference: Law 3617/2007, Government Gazette (FEK A 270/2007)

Entry into force: 22.1.2008

English title: Agreement (by exchange of letters) modifying the Consular Convention between the Kingdom of Greece and the Socialist Republic of Romania

Short summary: New Article 8bis inserted providing for establishment of consular posts headed by honorary consular officers, and their regime to be governed by relevant provisions of 1963 Vienna Convention

27.

Title: Συνθήκη Φιλίας, Προξενική και εγκαταστάσεως μεταξύ του Βασιλείου της Ελλάδας και της Δημοκρατίας των Φιλιππίνων, 28.8.1950

Publication reference: Legislative Decree 2964/1954, Government Gazette (FEK A 196/1954)

Entry into force: 25.8.1954

English title: Treaty of Friendship, consular service and establishment between the Kingdom of Greece and the Republic of the Philippines

[Legislation, circulars, internal guidelines](#)

28.

Title: Κύρωση των Αποφάσεων των Αντιπροσώπων των Κυβερνήσεων των Κρατών-Μελών της Ευρωπαϊκής Ένωσης σχετικά με την προστασία των πολιτών της Ευρωπαϊκής Ένωσης, εκ μέρους των διπλωματικών και προξενικών αντιπροσωπειών και περί θεσπίσεως του προσωρινού ταξιδιωτικού εγγράφου

Publication reference: Law 2968/2001, Government Gazette (FEK A 280/18.12.2001)

English title: Ratification of the Decisions of the Representatives of the Governments of the Member States meeting within the Council of the European Union regarding the protection of EU citizens by the diplomatic and consular representations and the establishment of an emergency travel document

Short summary: This law transposes Decisions 95/553/EC and 96/409/CSFP into the Greek legal order. Articles 2-5 contain obligations of Greece regarding protection of EU citizens by consular representatives.

29.

Title: Οργανισμός του Υπουργείου Εξωτερικών

Publication reference: Law 3566/2007, Government Gazette (FEK A 117/2007)

English title: Code on the Organization of the Ministry of Foreign Affairs

Short summary: Law on the mission and competences of the Hellenic MFA. In particular, Articles 50-60 concern creation and duties of consular missions. Article 162 concerns expenditures/fees.

[Websites](#)

30.

Title: Υπουργείο Εξωτερικών

Publication reference: www.mfa.gr

English title: Hellenic Ministry of Foreign Affairs



Hungary - Magyarország (HU)

1. Introduction

This Report contains the legal framework and national practice of Hungary on consular protection as of 15 May 2010.

The basis of the Report is: monographs and articles on international law and consular practice in Hungary, the website of the Hungarian Ministry of Foreign Affairs¹, interviews with officials from this Ministry and related internal documents.

1.1. Terminology - National acronyms and definitions

Hungarian Official Gazette (*Magyar Közlöny*); the official journal of Hungarian national law has been published from 1945 on.

Official Volume of Acts and Directives (*Törvények és rendeletek hivatalos gyűjteménye*), the compilation of Hungarian acts and directives as an annual volume was published from 1949 to 2004.

Department of Consular Affairs of the Hungarian Ministry of Foreign Affairs (*Külgyminisztérium Konzuli Főosztálya*): department of the Ministry of Foreign Affairs responsible for the management of all issues related to consular law.

2001. évi XLVI. törvény a konzuli védelemről, Act XLVI of 2001 on consular protection.

17/2001. (XI. 15.) KüM rendelet a konzuli védelem részletes szabályairól, Directive 17/2001 of 2001 of the Ministry of Foreign Affairs on the detailed regulation of consular protection.

1/2002. (I. 23.) KüM-IM együttes rendelet a konzuli tisztviselő konzuli okirat készítési és konzuli tanúsítvány kiállítási tevékenységének részletes szabályairól, Common Directive 1/2002 of the Ministry of Foreign Affairs and Ministry of Justice on notarial acts of consular officers.

1/1991. (IV. 9.) KüM rendelet a konzuli díjakról, Directive 1/1991 of the Ministry of Foreign Affairs on the consular fees.

2/1995. (III. 24.) KüM rendelet a tiszteletbeli konzulok küldetéséről és fogadásáról, Directive 2/1995 of the Ministry of Foreign Affairs on the mandate of the honorary consuls.

2. Legal framework

2.1. International law

Hungary is/is not a party to the following multilateral conventions:

- Vienna Convention on Consular Relations: Hungary has been a party since 19 June 1987 [13/1987. tvr. *Magyar Közlöny* (Hungarian Official Gazette) 40/1987, 15 September 1987, pp. 783-799]. No reservations have been made.

¹ www.kulugyminiszterium.hu

- o Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes: Hungary has been a party since 8 December 1989. No reservations have been made.
- Vienna Convention on Diplomatic Relations: Hungary has been a party since 24 September 1965 [22/1965. *tvr. Törvények és rendeletek hivatalos gyűjteménye* (Official Volume of Acts and Directives) 1966, pp. 124-131].
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, 14 December 1973: Hungary has been a party since 26 March 1975 [22/1977. *tvr. Törvények és rendeletek hivatalos gyűjteménye* (Official Volume of Acts and Directives) 1978, pp. 288-292].
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80): no party.

Hungary has concluded bilateral agreements on consular law and protection with 31 states (Austria, Turkey, Russia, Kazakhstan, Portugal, Ukraine, Cuba, Bulgaria, Czech Republic, Slovakia, France, Greece, Jemen, Cambodia, China, North Korea, Laos, Poland, Mongolia, Nicaragua, Romania, Syria, Lybia, Tunesia, Vietnam, Iraq, Italy, Great-Britain, Spain, Ireland, Finland).

Lithuania and Hungary came to a verbal agreement on consular protection in Vilnius on 30 May 2007. According to the agreement, **Hungary provides consular assistance to Lithuanian citizens in the following countries:** Cyprus, South Africa, United Arab Emirates, Indonesia, Iran, Jordan, Cuba, Lebanon, Macedonia, Montenegro, Pakistan, Saudi Arabia, Serbia, Singapur, Syria, Tajvan, Thailand and Vietnam. For this aim, Hungarian consular officers work in close cooperation with the Lithuanian Ministry of Foreign Affairs and the honorary consuls. **Lithuanian citizens are informed about this possibility by the Lithuanian Ministry of Foreign Affairs.** **There is no additional similar agreement with any other EU Member State.**

2.2. Transposition of international law into national law

According to the Act L of 2005 on the conclusion of international treaties, **the Hungarian legislation follows a dualist approach.** Therefore, international treaties ratified by Hungary shall be promulgated in the form of an act or a governmental order so that they become part of the Hungarian national legal system. Accordingly, the relevant international treaties on diplomatic and consular relations are promulgated in the form of Hungarian acts.

2.3. Implementation of European law into national law

The TFEU was promulgated by the Act CLXVIII of 2007 [2007. évi CLXVIII. *tv. Magyar Közlöny* (Hungarian Official Gazette) 182/2007, 22 December 2007]².

The relevant **decisions 95/553/EC and 96/409/CSFP are directly applicable.**

2.4. National law

The right to consular protection is declared by the Hungarian Constitution (Art 69 para 3). According to this provision every Hungarian citizen is entitled to the protection

² The EC-Treaty was promulgated by the Act XXX of 2004 [2004. évi XXX. *tv. Magyar Közlöny* (Hungarian Official Gazette) 60/2004, 30 April 2004].

of the Republic of Hungary whenever legally residing abroad. Accordingly, **the right to consular protection is a constitutional right of Hungarian citizens.**

In addition, national legislation was adopted ensuring a more detailed regulation. The most significant national legal documents are the following:

- 2001. évi XLVI. törvény a konzuli védelemről;
- 17/2001. (XI. 15.) KüM rendelet a konzuli védelem részletes szabályairól; amended by Decree 5/2006 (X.2) KüM implementing Decision 95/553/EC
- 1/2002. (I. 23.) KüM-IM együttes rendelet a konzuli tisztviselő konzuli okirat készítési és konzuli tanúsítvány kiállítási tevékenységének részletes szabályairól;
- 1/1991. (IV. 9.) KüM rendelet a konzuli díjakról;
- 2/1995. (III. 24.) KüM rendelet a tiszteletbeli konzulok küldetéséről és fogadásáról.

In case a consular officer refuses to provide consular protection, the affected national can turn to the Department of Consular Affairs of the Ministry of Foreign Affairs. The Head of the Ministry can review the decision of the Department on appeal. An appeal against the decision of the Minister of Foreign Affairs can be filed at the Metropolitan Court of Budapest.

Nevertheless, **so far no case law exists.** There has been no claim against the decisions of the Department of Consular Affairs.

2.5. Documentation of consular protection

There are several monographs published on law of diplomatic and consular relations, such as

- Frank, Tímea: *A diplomáciai és a konzuli kapcsolatok joga* (Rejtjel Kiadó, Budapest, 2002) [Law of diplomatic and consular relations]
- Hargitai, József: *Konzuli jog* (Budapest, 1998) [Law of consular relations]
- Éliás, Pál: *A konzuli jog és a diplomáciai védelem alkotmányos kérdései* (Közgazdasági és Jogi Kiadó; Magyar Tudományos Akadémia Állam- és Jogtudományi Intézete, Budapest, 1997) [Constitutional issues related to law of consular relations and diplomatic protection]
- Martin, Györgyi: *Az idegenjog és a konzuli jog: kommentár a gyakorlat számára* (HVG ORAC, Budapest, 1997) [Law of consular relations: a commentary for practitioners]

Further useful information can be found in a periodical published by the Hungarian Ministry of Foreign Affairs, the *Magyar Külpolitikai Évkönyv* (Yearbook of Hungarian Foreign Politics). The Yearbook is available on the website of the Ministry³.

2.6. Information to citizens on consular protection

Names of consular officers and honorary consuls entitled to the authorization of documents are published by the Head of the Ministry of Foreign Affairs on an annual basis. All the relevant information on consular protection and assistance is published in

³ www.kulugyminiszterium.hu/kum/hu/bal/Kulugyminiszterium/Kiadvanyaink/Kulpolitikai_evkonyvek/

the Hungarian Official Gazette and the website of the Ministry of Foreign Affairs⁴. All changes taking place in the regulation are published within three days.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Hungarian bilateral agreements with third countries do not include provisions protecting Union citizens working and living in third countries.

Hungarian bilateral agreements with third countries do not include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

In general, Hungary does not extend consular protection to Union citizens' family members who are not nationals of a Member State. However, **in practice the Department of Consular Affairs of the Hungarian Ministry of Foreign Affairs (*Külgügyminisztérium Konzuli Főosztálya*) takes into consideration the fundamental principle of family unity.**

Until now, Hungary has not informed third countries of this practice.

3.2. Statistical data on consular practice

Hungary provides extensive consular services to its citizens. Assistance has been provided to Union citizens as well.

Statistical data⁵:

1998:

Consular acts: 112.317
Emergency situations (death, accident): 1.173
Issue of new passports: 18.142
Notarisations: 34.792
Nationality affairs: 3.357
Legal and other advisory aid: 8.212
Financial advances (consular loan): 119
Consular acts in criminal matters: 2.135

2000:

Consular acts: 128.874
Emergency situations (death, accident): 1.431
Issue of new passports: 15.221
Notarisations: 42.876
Nationality affairs: 3.268
Legal and other advisory aid: 23.224
Financial advances (consular loan): 85
Consular acts in criminal matters: 2.711

1999:

Consular acts: 134.257
Emergency situations (death, accident): 1.522
Issue of new passports: 15.577
Notarisations: 50.645
Nationality affairs: 3.201
Legal and other advisory aid: 16.697
Financial advances (consular loan): 129
Consular acts in criminal matters: 2.622

2001:

Consular acts: 136.029
Emergency situations (death, accident): 1.128
Issue of new passports: 17.072
Notarisations: 45.350
Nationality affairs: 3.612
Legal aid and other advisory aid: 27.656
Financial advances (consular loan): 79
Consular acts in criminal matters: 2.081

⁴ www.kulugyminiszterium.hu.

⁵ Website Hungarian Ministry of Foreign Affairs:
www.kulugyminiszterium.hu/kum/hu/bal/Konzuli_informaciok/Konzuli_szolgalat/A_magyar_konzuli_szolgalatrol/magy_konz_szolg_szamokban.htm (last visited: 19 July 2010).

2002: No data available.

2003: No data available.

2004:

Consular acts: 163.172
 Emergency situations (death, accident): 835
 Issue of new passports: 12.431
 Notarisations: 35.552
 Nationality affairs: 6.549
 Legal and other advisory aid: 50.364
 Financial advances (consular loan): 60
 Consular acts in criminal matters: 1.750

2005:

Consular acts: 166.382
 Emergency situations (death, accident): 811
 Issue of new passports: 13.158
 Notarisations: 45.999
 Nationality affairs: 6.975
 Legal aid and other advisory aid: 41.417
 Financial advances (consular loan): 105
 Consular acts in criminal matters: 3.050

2006:

Consular acts: 78.868
 Emergency situations (death, accident): 500
 Issue of new passports: 10.161
 Notarisations: 48.543
 Nationality affairs: 3.291
 Legal aid and other advisory aid: 1.641
 Financial advances (consular loan): 14
 Consular acts in criminal matters: 1.037

2007:

Consular acts: 92.776
 Emergency situations (death, accident): 520
 Issue of new passports: 11.545
 Notarisations: 62.354
 Nationality affairs: 3.195
 Legal and other advisory aid: 1.902
 Financial advances (consular loan): 77
 Consular acts in criminal matters: 1.164

2008:

Consular acts: 94.416
 Emergency situations (death, accident): 488
 Issue of new passports: 15.174
 Notarisations: 57.915
 Nationality affairs: 3.209
 Legal and other advisory aid: 1.306
 Financial advances (consular loan): 66
 Consular acts in criminal matters: 1.202
 Issue of Emergency Travel Documents: 2.658

Consular protection for EU citizens: no data available

Consular protection for Hungarian citizens received from other Member States' embassies and third countries: no data available

4. Consular protection in detail

In Hungary, beyond the Vienna Convention on Consular Relations, national implementing law was adopted as well: [Act XLVI of 2001](#) on consular protection and the [17/2001. \(XI. 15.\) Directive of the Ministry of Foreign Affairs](#) on detailed rules of consular protection.

4.1. Right to consular (and diplomatic) protection

In Hungary, the right to consular protection is declared by the Hungarian Constitution (Art 69 para 3). Consular protection is provided to Hungarian nationals

and Union citizens. A Union citizen is entitled to analogous consular protection as a Hungarian national if there is no consular office in the receiving State. In these cases, assistance can be provided following consultation with the consular mission of the State of nationality, which is accredited to the receiving State but located in a third State. If it is not possible, the Hungarian consular mission consults the Ministry of Foreign Affairs of the State of nationality.⁶

A Hungarian national having another nationality as well can be provided consular protection by the Hungarian mission in the State of that other nationality only to the extent that is permitted by that State.⁷ If a certain individual in need cannot certify his/her Hungarian nationality, until it is done, the Hungarian mission provides the essential and urgent protection and assistance.⁸

As a main rule (and according to the relevant legal regulation), consular protection is not extended to family members who are not nationals of a Member State. However, in practice the Department of Consular Affairs of the Hungarian Ministry of Foreign Affairs takes into consideration the **fundamental principle of family unity**. **Individuals belonging to other categories (such as refugees, stateless persons) are not provided consular protection.**

In most third countries, Hungary has only diplomatic missions where the consular offices function as well. **In three special cases, in addition to the diplomatic mission, separate consulates are established.** (i) The first reason is the size of the receiving country. Therefore, for instance, Hungary has separate consulates in Los Angeles in the US, and in Dusseldorf and Munich in Germany. (ii) The second case is when Hungarian citizens travel in large number to a part of a country which is far from its capitol. This is the reason why Hungary has a separate consulate in Krakow, Barcelona or Istanbul. (iii) The third case is when there is a large number of Hungarians concentrated in a certain state. In this case examples include Kassa, Kolozsvár, Csíkszereda, Szabadka or Chicago and Toronto.

Honorary consuls are entitled to provide assistance to Hungarian and EU citizens according to the relevant provisions of international law. They can provide representation in cases of inheritance or other cases before the courts and other authorities of the receiving State. This assistance is available if a temporary decision is urgently needed and the affected national is not able to defend his own rights and interests in time. Honorary consuls are entitled to take requests for Hungarian passport or authorization for entrance or residence in Hungary. Nationals residing in his/her consular district are entitled to hand in such a request to the honorary consuls.

4.2. Assistance in cases of death

Hungarian consular missions turn to the relevant authorities of the receiving State in order to obtain the death certificate. They **inform** the next-of-kin and let them know what necessary arrangements should be taken for the body to be repatriated and buried. They issue the repatriation permit.

If a minor or a relative under disability remains alone after the death of the affected person, the consular missions provide assistance, search for the local authorities providing care and take the necessary measures if an appointment of a legal guardian is needed.

⁶ 17/2001. (XI. 15.) KüM rendelet a konzuli védelem részletes szabályairól, Art. 14/A-B.

⁷ 2001. évi XLVI. törvény a konzuli védelemről, Art. 3 para 2.

⁸ 17/2001. (XI. 15.) KüM rendelet a konzuli védelem részletes szabályairól, Art. 3.

Hungarian consular missions take the urgent necessary measures for the safety of the inheritance, and they publish an announcement in order to find the unknown successor.⁹

In practice, **in many cases the consular missions are not turned to by the affected nationals, but they arrange repatriation in a private way.**

If the Hungarian consular mission is informed about the death of a Union citizen, it informs the consular authority of the affected Member State without delay and takes the necessary measures according to the consultation with this authority. It provides assistance analogue to the rules applicable in cases of Hungarian nationals.¹⁰

Among others, the consular mission provided assistance for the four Hungarian victims of the 2009 Air France accident.

Another specific case which drew media attention was the assassination of Eduardo Rosa-Flores and others in April 2009. The Hungarian writer was born in Bolivia and killed by the guards of President Evo Morales. The Hungarian diplomatic mission in Venezuela, the honorary consul in Bolivia and the consul accredited in Argentina cooperated to gain information about the circumstances of death. Their efforts were hindered by the Bolivian authorities.

4.3. Assistance in cases of serious accident or serious illness

Hungarian consular missions inquire whether the affected person is given proper medical care, inform the next-of-kin about the conditions of the medical care, the report to the police and the enforcement of damages in the receiving State (if applicable). If more nationals are affected by the accident the consular officer possibly checks out in person as well whether proper medical care is provided. The consular missions turn to the authorities of the receiving State if a fundamental right, personal dignity or the right to the protection of personal data is violated.¹¹

Serious accidents or injuries are the majority of cases where there is a need for special consular assistance. There is a high number of cases where tourists suffering skiing or other accidents on their trip turn to the consular missions.

4.4. Assistance in cases of arrest and detention

The Hungarian consular missions inform the arrested individual about the relevant law applicable in the receiving State, if the affected person accepts this assistance. They inquire whether it is possible to bail out the affected person and what the potential sentences are (with special consideration on potential death sentences). They inform the person indicated by the detained person, facilitate communication with them and possible visits of the next-of-kin, and provide advice regarding the use of legal representatives or interpreters, **but they do not provide legal representation**. If there is no free legal representation ensured by the receiving State, and the detained person does not have the financial resources for this, the consular missions provide assistance in order to facilitate that the affected person obtains them out of own or other resources. They provide assistance for money transfers in the detained person does not have the necessary financial resources at hand. In addition, they inform the detained person about the possibility and conditions for ceding the right of enforcement of the sentence to the State of Hungary.

⁹ 2001. évi XLVI. törvény a konzuli védelemről, Art. 11; 17/2001. (XI. 15.) KüM rendelet a konzuli védelem részletes szabályairól, Art. 11.

¹⁰ 17/2001. (XI. 15.) KüM rendelet a konzuli védelem részletes szabályairól, Art. 14/D.

¹¹ 2001. évi XLVI. törvény a konzuli védelemről, Art. 6.

The Hungarian consular missions **observe the conditions of detainment**, and whether international legal norms are respected during the procedure. If it is possible, the consular officer checks out these circumstances in the way of personal visits. If the detained person is a minor, under disability or a pregnant woman, he/she shall be visited without delay.

It shall be clarified at the very beginning of the process whether the detained person intends to use the assistance of the consular mission. Without his/her will the consular mission shall not take any measure. In the case of a person having no or limited capacity, this intent shall be expressed by the legal guardian or representative.¹²

There are sporadic cases when there is a need for this kind of assistance, such as in South American countries concerning drug trafficking.

4.5. Assistance to victims of violent crime

See [Section 4.3.](#) (in the Hungarian legislation these cases are discussed under the same provision).

4.6. Relief and repatriation of distressed citizens

4.6.1. Natural disasters

First, the Hungarian consular mission checks out whether any Hungarian nationals have been affected by the disaster, obtaining information from the next-of-kin, the affected authorities or the Ministry of Foreign Affairs. If there is a Hungarian national, unless he/she declares their intent not to use consular assistance, the consular mission informs the next-of-kin about his/her conditions.

The Minister of Foreign Affairs can activate a so-called crisis centre which then becomes functional within one hour. There is one special room in the Ministry equipped with all the tools needed for smooth communication with the relevant authorities in such cases.

2004 Thailand tsunami

The Hungarian Ministry of Foreign Affairs sent additional consular officers to Thailand in order to strengthen its ability to provide assistance to nationals in need.

2010 Haiti

There was no Hungarian victim. Hungary has not accepted orphans from Haiti.

2010 Chile

There was no Hungarian victim.

4.6.2. Terrorist attacks

2009 Mumbai terrorist attack.

The consular mission and the honorary consul provided assistance.

4.6.3. Pandemics

In cases of pandemics of H1N1 or SARS, no special consular acts can be reported.

¹² 2001. évi XLVI. törvény a konzuli védelemről, Art. 8-10; 17/2001. (XI. 15.) KüM rendelet a konzuli védelem részletes szabályairól, Art. 9-10.

4.6.4. Military conflicts

In cases of military conflicts, just like in cases of natural disasters, **the continuity of the endangering situation is evaluated. There are three categories in this respect, states can be qualified as (i) not recommended, (ii) recommended for visit or as (iii) one raising security concerns.** For being qualified as not recommended, the endangering situation shall be continuous in the relevant State. The process of categorization occurs at a national level and by consultation with Member States of the EU and the Council of the EU.¹³ The results of the process of categorization are published on the website of the Ministry of Foreign Affairs¹⁴.

In order to facilitate the enforcement of consular protection Hungarian nationals can inform the consular missions about their travel and residence in a certain country in advance.

If there is a continuous military conflict, the relevant State is qualified as not recommended to travel to. If there is any trip already organized by any travel agency, the agency can be obliged to pay back the fee paid in advance.

Recent examples for countries not recommended for travel: Afghanistan, Algeria, Bolivia, Burundi, Chad, DRC, East Timor, Eritrea, Ethiopia, Georgia, Guinea, Haiti, Iraq.

2006 Lebanese-Israeli armed conflict.

One family was evacuated which included members who were not nationals of any Member State. No consular loan was provided. In addition, due to efficient sharing of transport resources (land transport, ship and military aircraft) between EU Member States, Slovak nationals were transported by Austria, Poland, Czech Republic and Hungary. Reimbursement of costs was not asked from Slovak citizens or Slovakia itself.

4.6.5. Financial advances

A consular loan is provided by the Hungarian consular missions only at utmost urgency, under strict conditions. It is provided only for repatriation purposes if the delay of repatriation would cause serious grievances.¹⁵ The consular officer obtains the travel ticket and gives it to the affected person. A consular loan is provided in cash only on an exceptional basis for unavoidable expenses during the travel.

The payment of a consular loan is to be enforced officially as taxes. The application for the loan can be denied due to the personal responsibility of the applicant. On an exceptional basis due to the social-financial circumstances of the affected national, he/she does not have to pay back the consular loan, or has to do so just partially.

A consular loan can be granted to a Union citizen only if the consular mission of the Member State of nationality gave its written permission and took the responsibility for the reimbursement of fees of procedure, including the consular fee. **At utmost urgency rules applicable to Hungarian nationals shall be applied to Union citizens as well.** In these cases the affected other Member State shall be informed and demanded for the posterior reimbursement of fees.¹⁶

¹³ 2001. évi XLVI. törvény a konzuli védelemről, Art. 7.

¹⁴ www.kulugyminiszterium.hu/kum/hu/bal/Konzuli_informaciok/Utazas_kulfoldre/Biztonsagi_kockazatot_jelento_tersegek/

¹⁵ 2001. évi XLVI. törvény a konzuli védelemről, Art. 5 para 3.

¹⁶

17/2001. (XI. 15.) KüM rendelet a konzuli védelem részletes szabályairól, Art. 14/C.

4.7. Consular fees

Consular fee is to be paid for procedures regarding requests filed at the Department of Consular Affairs of the Hungarian Ministry of Foreign Affairs, to Hungarian consular or diplomatic missions. In addition, consular fee is to be paid for services provided by these authorities. On an exceptional basis due to the social-financial circumstances of the affected national, he/she does not have to pay consular fees, or has to do so just partially. The consular fee is to be paid in Euro or in other convertible currency used in the receiving State, in exceptional cases in the local currency. In cases of verification of documents or translations, the fees range between Euro 15 and 35. The request for consular loan costs Euro 30, and fee for legal aid provided by a consular officer is Euro 100 per hour. All the fees are defined by the Directive 1/1991 of the Ministry of Foreign Affairs on the consular fees.

4.8. Reimbursement of the assisting State

A general rule or guideline does not exist concerning the issue of reimbursement of the assisting State in any of the relevant Hungarian legal documents.

5. Emergency travel documents (ETD)

All Hungarian consular missions are equipped with ETDs. Upon an application for an ETD, the Hungarian consular mission turns to the consular authorities of the Member State of nationality for the verification of personal data of the applicant and for the permission of the issuance of the document.¹⁷

Honorary consuls (presently their number is around 200) are not entitled to issue ETDs.

No problem in this area can be reported, in all cases the necessary and demanded ETDs were issued by Hungarian consular missions.

In addition to the issuance of ETDs, the Hungarian consular mission provides assistance and advice in order to facilitate the return to the Member State of nationality.

6. Relevant diplomatic protection

The right of citizens to be protected by the Republic of Hungary is declared by the Hungarian Constitution (Art 69 para 3). A Hungarian national having another nationality as well can be provided protection by the Hungarian mission in the State of that other nationality only to the extent that is permitted by that State.

7. Summary

Hungary is a party to the most important international treaties on consular relations, has concluded numerous bilateral treaties and also maintains an informal arrangement.

Hungary adopted specific implementing national law regarding consular protection in order to create a more detailed regulation for easier practical use.

Assistance to EU citizens is provided according to Article 23 TFEU. So far, some but not extensive practice exists.

The legal framework has not been extended by bilateral arrangements to cover the delegation of consular or diplomatic protection according to Article 23 TFEU, or to provide support for family members who are not nationals of a Member State.

¹⁷ 2001. évi XLVI. törvény a konzuli védelemről, Art. 5 para 2; 17/2001. (XI. 15.) KüM rendelet a konzuli védelem részletes szabályairól, Art. 14/H.

8. List of important documents

1.

Title: Bécsi egyezmény a konzuli kapcsolatokról

Publication reference: Promulgated by: 13/1987. tvr. Magyar Közlöny (Hungarian Official Gazette) 40/1987, 15 September 1987, pp 783-799

Entry into force: 19 June 1987

English title: Vienna Convention on Consular Relations, Vienna, 24 April 1963

2.

Title: Bécsi egyezmény a diplomáciai kapcsolatokról

Publication reference: Promulgated by: 22/1965. tvr. Törvények és rendeletek hivatalos gyűjteménye (Official Volume of Acts and Directives) 1966, pp 124-131

Entry into force: 24 September 1965

English title: Vienna Convention on Diplomatic Relations, Vienna, 18 April 1961

3.

Title: 2001. évi XLVI. törvény a konzuli védelemről

Publication reference: Magyar Közlöny (Hungarian Official Gazette) 75/2001 (VII. 3.)

Entry into force: 2001

English title: Act XLVI on consular protection

4.

Title: 17/2001. (XI. 15.) KüM rendelet a konzuli védelem részletes szabályairól

Publication reference: Magyar Közlöny (Hungarian Official Gazette) 127/2001 (XI. 15.)

Entry into force: 15.11.2001

English title: Directive 17/2001 of the Ministry of Foreign Affairs on the detailed regulation of consular protection

5.

Title: 1/2002. (I. 23.) KüM-IM együttes rendelet a konzuli tisztviselő konzuli okirat készítési és konzuli tanúsítvány kiállítási tevékenységének részletes szabályairól

Publication reference: Magyar Közlöny (Hungarian Official Gazette) 9/2002 (I. 23.)

Entry into force: 23.01.2002

English title: Common Directive 1/2002 of the Ministry of Foreign Affairs and Ministry of Justice on notarial acts of consular officers

6.

Title: 1/1991. (IV. 9.) KüM rendelet a konzuli díjakról

Publication reference: Magyar Közlöny (Hungarian Official Gazette) 37/1991 (IV. 9.)

Entry into force: 15.04.1991

English title: Directive 1/1991 of the Ministry of Foreign Affairs on the consular fees

7.

Title: 2/1995. (III. 24.) KüM rendelet a tiszteletbeli konzulok küldetéséről és fogadásáról

Publication reference: Magyar Közlöny (Hungarian Official Gazette) 23/1995 (III. 24.)

Entry into force: 08.04.1995

English title: Directive 2/1995 of the Ministry of Foreign Affairs on the mandate of the honorary consuls

8.

Title: Konzuli egyezmény a Magyar Királyság és a Török Köztársaság között

Entry into force: 25.10.1940

English title: Consular Treaty between the Republic of Hungary and the Republic of Turkey, Ankara, 18.06.1938

9.

Title: Konzuli egyezmény a Magyar Köztársaság és az Oroszországi Föderáció között

Publication reference: Magyar Közlöny (Hungarian Official Gazette), 2003/23 (III. 7.)

Entry into force: 19.01.2003

English title: Consular Treaty between the Republic of Hungary and the Russian Federation, Budapest, 12.01.2001

10.

Title: Konzuli egyezmény a Magyar Köztársaság és a Kazak Köztársaság között
Publication reference: Magyar Közlöny (Hungarian Official Gazette), 2000/14 (II. 18.)

Entry into force: 25.12.1996

English title: Consular Treaty between the Republic of Hungary and the Republic of Kazakhstan, Almati, 09.03.1995

11.

Title: Konzuli egyezmény a Magyar Köztársaság és a Portugál Köztársaság között
Publication reference: Magyar Közlöny (Hungarian Official Gazette), 2006/128 (X. 19.)

Entry into force: 23.03.2005

English title: Consular Treaty between the Republic of Hungary and the Republic of Portugal, Budapest, 04.11.2002

12.

Title: Konzuli Egyezmény a Magyar Köztársaság és az Ukrán Szovjet Szocialista Köztársaság között

Publication reference: Magyar Közlöny (Hungarian Official Gazette), 2000/14 (II. 18.)

Entry into force: 04.02.1993

English title: Consular Treaty between the Republic of Hungary and the Soviet Socialist Republic of Ukraine, Budapest, 31.05.1991

13.

Title: Konzuli egyezmény a Magyar Népköztársaság Kormánya és a Kubai Köztársaság Forradalmi Kormánya között

Entry into force: 09.09.1972

English title: Consular Treaty between the government of the People's Republic of Hungary and the Revolutionary Government of the Republic of Cuba, Budapest, 24.07.1969

14.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Bolgár Népköztársaság között

Entry into force: 18.06.1972

English title: Consular Treaty between the People's Republic of Hungary and the People's Republic of Bulgaria, Budapest, 26.11.1971

15.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Csehszlovák Szocialista Köztársaság között

Entry into force: 20.02.1974

English title: Consular Treaty between the People's Republic of Hungary and the Czech-Slovak Socialist Republic, Budapest, 17.05.1973

16.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Finn Köztársaság között

Entry into force: 01.01.1973

English title: Consular Treaty between the People's Republic of Hungary and the Republic of Finland, Helsinki, 24.08.1971

17.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Francia Köztársaság között

Entry into force: 15.10.1967

English title: Consular Treaty between the People's Republic of Hungary and the Republic of France, Budapest, 28.07.1966

18.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Görög Köztársaság között

Entry into force: 26.05.1979

English title: Consular Treaty between the Republic of Hungary and the Republic of Greece, Athens, 18.03.1977

19.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Jemeni Népi Demokratikus Köztársaság között

English title: Consular Treaty between the People's Republic of Hungary and the People's Democratic Republic of Yemen, Budapest, 05.11.1981

20.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Kambodzsai Népköztársaság között

Entry into force: 30.07.1981

English title: Consular Treaty between the People's Republic of Hungary and the People's Republic of Cambodia, Budapest, 27.11.1980

21.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Kínai Népköztársaság között

Entry into force: 28.11.1986

English title: Consular Treaty between the People's Republic of Hungary and the People's Republic of China, Budapest, 03.06.1986

22.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Koreai Népi Demokratikus Köztársaság között

Entry into force: 16.03.1971

English title: Consular Treaty between the People's Republic of Hungary and the People's Democratic Republic of Korea, Phenjan, 05.10.1970

23.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Laoszi Népi Demokratikus Köztársaság között

Entry into force: 10.05.1984

English title: Consular Treaty between the People's Republic of Hungary and the People's Democratic Republic of Laos, Budapest, 02.11.1983

24.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Lengyel Népköztársaság között

Entry into force: 06.01.1974

English title: Consular Treaty between the People's Republic of Hungary and the People's Republic of Poland, Warsaw, 05.06.1973

25.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Mongol Népköztársaság között

Entry into force: 14.11.1974

English title: Consular Treaty between the People's Republic of Hungary and the People's Republic of Mongolia, Budapest, 27.06.1974

26.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Nicaraguai Köztársaság között

Entry into force: 27.12.1982

English title: Consular Treaty between the People's Republic of Hungary and the Republic of Nicaragua, Managua, 04.11.1981

27.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Román Szocialista Köztársaság között

Entry into force: 14.11.1974

English title: Consular Treaty between the People's Republic of Hungary and the Socialist Republic of Rumania, Bucharest, 28.11.1973

28.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Szíriai Arab Köztársaság között

Entry into force: 30.04.1988

English title: Consular Treaty between the People's Republic of Hungary and the Arabic Republic of Syria, Damascus, 17.09.1986

29.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Szocialista Libiai Arab Jamahiriya között

Entry into force: 21.03.1982

English title: Consular Treaty between the People's Republic of Hungary and the Socialist Arabic Jamahiriya of Libya, Budapest, 24.09.1981

30.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Szovjet Szocialista Köztársaságok Szövetsége között

Entry into force: 19.01.1972

English title: Consular Treaty between the People's Republic of Hungary and the Federation of the Soviet Socialist Republics, Budapest, 20.03.1971

31.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Tunéziai Köztársaság között

Entry into force: 25.11.1984

English title: Consular Treaty between the People's Republic of Hungary and the Republic of Tunisia, Budapest, 06.12.1982

32.

Title: Konzuli egyezmény a Magyar Népköztársaság és a Vietnámi Szocialista Köztársaság között

Entry into force: 30.04.1980

English title: Consular Treaty between the People's Republic of Hungary and the Socialist Republic of Vietnam, Hanoi, 11.10.1979

33.

Title: Konzuli egyezmény a Magyar Népköztársaság és az Iraki Köztársaság között

Entry into force: 22.09.1982

English title: Consular Treaty between the People's Republic of Hungary and the Republic of Iraq, Budapest, 11.06.1982

34.

Title: Konzuli egyezmény a Magyar Népköztársaság és az Olasz Köztársaság között

Entry into force: 21.12.1974

English title: Consular Treaty between the People's Republic of Hungary and the Republic of Italy, Rome, 16.10.1969

35.

Title: Konzuli egyezmény a Magyar Népköztársaság és Nagy-Britannia és Észak-Írország Egyesült Királysága között

Entry into force: 28.11.1971

English title: Consular Treaty between the People's Republic of Hungary and the United Kingdom, Budapest, 12.03.1971

36.

Title: Konzuli egyezmény a Magyar Népköztársaság és Spanyolország között

Entry into force: 08.08.1984

English title: Consular Treaty between the People's Republic of Hungary and Spain, Budapest, 24.02.1982

37.

Title: Megállapodás a Magyar Népköztársaság Kormánya és Írország Kormánya között az állampolgáraik konzuli és diplomáciai képviseletéről

Entry into force: 07.02.1968

English title: Consular Treaty between the People's Republic of Hungary and the Government of Ireland, London, 07.02.1968

38.

Title: Megállapodás levélváltás formájában a Magyar Népköztársaság és a Finn Köztársaság között 1971.08.24-én aláírt Konzuli egyezmény kiegészítéséről

Entry into force: 06.07.1993

English title: Additional Protocol to the Consular Treaty of 1971 between the People's Republic of Hungary and the Republic of Finland, Helsinki, 01.05.1993

39.

Title: Konzuli egyezmény a Magyar Népköztársaság és az Osztrák Köztársaság között

Entry into force: 30.04.1977

English title: Consular Treaty between the People's Republic of Hungary and the Republic of Austria, Budapest, 25.02.1975

[Websites, reports](#)

40.

Title: Külügyminisztérium – Konzuli ügyek

Publication reference: www.kulugyminiszterium.hu/kum/hu/bal/Konzuli_informaciok/

English title: Ministry for Foreign Affairs – Consular Affairs

41.

Title: Külügyminisztérium – Külpolitikai évkönyv (1998-2009)

Publication reference:

www.kulugyminiszterium.hu/kum/hu/bal/Kulugyminiszterium/Kiadvanyaink/Kulpolitikai_evkonyvek/

English title: Ministry of Foreign Affairs – Yearbook of Hungarian Foreign Politics



Ireland - Eire (IE)

1. Introduction

This Report contains the legal framework and national practice of Ireland on consular and diplomatic protection as of 31 May 2010¹.

Ireland has few documents on the public record relating to practice in this regard². As will be seen, most of the Irish practice is contained in information circulars which are normally distributed only to Irish consular officials abroad.

Thus the bulk of the Report is based on the limited legislation which exists (including that based on EU or international treaty law), and discussion with officials from the Consular Services section of the Department of Foreign Affairs. It should be added that a study of the existing guidelines as supplied to Irish consular officials has recently (at the time of writing) undergone a revision exercise by the Consular Services Section in an attempt to rationalise and up-date them for use by Irish diplomatic missions abroad. This exercise was largely completed in April 2010 under the title “Consular Assistance: Policy and Procedures”. As previously, it is not envisaged that this up-dated practice will necessarily enter the public domain; however, some background reliance on it for this Report has possible.

There has not been a trend in Ireland towards entering into bilateral treaties covering consular matters; and one isolated example - the Protocol signed with the US in 1998 amending the 1950 Consular Convention with Ireland (see the Consular Conventions Act 1954) – does not deal at all with consular *assistance* matters but merely with standardised matters concerning consular functions; and Ireland would consider that the Vienna Convention on Consular Relations (1963) obviates the need for any consular assistance-type of bilateral agreements. However it appears that because of the close Irish relationship with the UK, bilateral consultations have been made to improve *Anglo-Irish* consular practice. Despite this, and the fact that **Ireland does not pool its consular resources with other EU States³, the possibility of consular assistance collaboration is considered by Ireland on a case-to-case basis, although no formal or informal cost-sharing arrangements exist with other EU States.**

Furthermore, it appears that in the recent past official consideration was given to setting out Irish consular assistance practice in statutory form as can be found in other States; but it was decided (after legal consultation) not to pursue this course, largely it seems because there are advantages in not specifying Irish practice in too much detail.

As will be seen below, Ireland as a **small country with limited diplomatic and consular representation abroad**, is likely to be less well placed to help its citizens in distress abroad as compared with its larger EU neighbours, as has been officially

¹ The Author of this Report would like to thank the Consular Services Section of the Department of Foreign Affairs in Dublin for their kind assistance in preparing this Report.

² Relevant documents are available in the [CARE database](#).

³ Ireland has not been part of any co-locations, common visa application centres, or common administrative centres, among EU countries.

acknowledged (see below). Even where it has such representation, in some larger states – such as China – Irish consular help may be less effective⁴.

It has also been officially stated that Irish travel advice is very citizen-orientated⁵ and compared with other European countries where travel advice has to be cleared at a political level; and that compared with other EU countries, Ireland provides “*an exceptional level of consular service to its citizens*”; so that it would be “*difficult to extend the level of consular protection to other EU nationals*”⁶. **Rules of good practice for Irish citizens are contained in the booklet issued by the Department of Foreign Affairs (hereafter cited as “official booklet”) and website of the same Department**⁷. For example, in the case of a “major incident”, Irish nationals abroad are told to check on the safety of other co-travellers, to contact a family member as soon as possible, and to contact the nearest Irish mission; and information on any missing or injured travelling companion should be made known to a friend, family member, the nearest Irish mission or the Department of Foreign Affairs as soon as possible⁸.

1.1. Terminology –National acronyms and definitions

CAU: the (Irish) Consular Assistance Unit (based in the Department of Foreign Affairs, Dublin)

Garda Siochana: Irish police force

Iris Oifigiúil: Irish Official Journal

Oireachtas: the collective name for the Irish parliamentary bodies (*Dail* and *Seanad*) and the President

2. Legal framework

Ireland’s legal framework consists of some statute law (especially that incorporating the Vienna Conventions on Consular Relations), multilateral treaties, obligations under EU law, past internal circulars to consular staff (recently up-dated), a website and general information booklet for public use; and agreements and State practice.

There is no general database (apart from statistics on consular assistance), though reference to ratification etc of relevant treaties is contained in the *Iris Oifigiúil* (Official Journal). **As yet there is no published official compilation of Irish practice which is publicly accessible** (though, as mentioned above, this has been recently improved on by the Consular Services Section of the Department of Foreign Affairs).

The Irish practice is summarised in the abovementioned official booklet.

⁴ Irish nationals are there warned that whereas the Embassy of Ireland in Beijing will provide as much consular assistance as possible, “[p]racticalities dictate that much of this assistance will be over the phone” (<http://www.embassyofireland.cn/Ireland/Assistance.htm>).

⁵ See Ireland’s “Comments on [the EU] Commission Green Paper ‘Diplomatic and Consular Protection of Union Citizens in Third Countries’”.

⁶ *Id.* n. 5.

⁷ Also available in the [CARE database](#).

⁸ Official booklet, at p. 2. In fact there are detailed guidelines on this matter provided for Irish diplomatic missions under the heading of “Missing Persons”. These guidelines emphasise that in the case of the sizeable volume of requests for this service every year, any information obtained on a ‘missing’ person’s whereabouts should, in the interests of privacy, only be released to a concerned third party with that person’s consent.

2.1. International law

There is an official database in the Irish Treaty Series on the Department of Foreign Affairs website⁹, apart from the *Iris Oifigiúil* (Official Journal) which lists the treaties to which Ireland is a party.

Ireland is a party to:

- Vienna Convention on Consular Relations(‘VCCR’), signed by Ireland on 24 April 1963; in force respecting Ireland on 23 May, 1967; no reservations have been made; transposed into Irish law by the Diplomatic Relations & Immunities Act, 1967;
- Convention on the Transfer of Sentenced Persons adopted in Strasbourg on 21 March 1983 (instrument of ratification deposited by Ireland on 14 March 1997 - in force November 1, 1995) and Additional Protocol thereto of 1997(ratification deposited by Ireland on 8 February 2007), entered into force respecting Ireland on 1 April, 2007 [respectively transposed into Irish law through the Transfer of Sentenced Persons Act 1995 (in force 1 November 1995) as amended by the Transfer of Sentenced Persons (Amendment) Act 1997].

Ireland is not a party to:

- Optional Protocol to the Vienna Convention on Consular Relations on the Compulsory Settlement of Disputes, signed by Ireland on 24 April 1963, but to date not ratified/acceded to;
- Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality 1963 (not signed by Ireland to date);
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (not signed by Ireland).

Ireland has signed no bilateral treaties which deal directly with consular assistance.

Ireland is not a party to any other multilateral treaty concerning consular and diplomatic assistance.

2.2. Transposition of international law into national law

As far as treaty law is concerned, an express national act is required to transpose such law into Irish law. This is because Art.29.6 of the Irish Constitution says that “[n]o international agreement shall be part of the domestic law save as may be determined by the Oireachtas”. Thus Ireland in this instance has a **dualist system** which requires treaty law to be enacted in a statute to become internally effective. Accordingly, the Diplomatic Relations & Immunities Act, 1967¹⁰ in its preamble makes it clear that this Act is implementing, inter alia, the *two* International Conventions concerning Diplomatic and *Consular* Relations. The Vienna Convention on Consular Relations (VCCR) is made part of Irish law by s. 6 of the Act. Thus, as seen, relevant articles in the 1967 Convention, such as Article 7 dealing with exercise of consular functions in a third State, are part of Irish law¹¹.

⁹ <http://www.dfa.ie/home/index.aspx?id=42915>

¹⁰ No. 8/1967.

¹¹ See Symmons, “Ireland” in P.M. Eisemann (ed.), Kluwer, 1996, *The Integration of International and European Community Law into the National Legal Order*, 317, 330.

Customary international law, on the other hand, is generally considered to be automatically part of Irish law, subject to certain exceptions like conflicting statutory law¹².

2.3. Implementation of European law into national law

EU law has a special status both by statute and the Irish Constitution (Art. 29), thus being incorporated into Irish law in a pre-eminent position. S.2 of the European Communities Act 1972 states that *“the treaties governing the European Communities and the existing and future acts adopted by the institutions of these communities shall be binding on the State and shall be part of the domestic law thereof”*. To this extent **EU law is automatically part of Irish law**¹³. This means that those elements of EU law that are directly applicable (eg., EU regulations and some treaty provisions) or are directly effective (as, eg, in the case of directives) are required to be enforced in Irish courts on terms dictated by the treaties. Under s.3(1) of the 1972 Act a Minister may make ministerial orders to enable s.2 thereof to have full effect; these would normally be in the form of statutory instruments¹⁴. **Art. 23 of the FEU Treaty and Decision 95/553/EC and Decision 96/409/CFSP are thus now directly applicable in Ireland; though Ireland made no legislative or publication move in this matter.** As a matter of administrative practice in the latter instance, notification was in 1999¹⁵ given that all necessary procedures required by the Irish legal system had been completed to enable the Decisions to be applied in Ireland; and Irish missions abroad have been notified of their obligation to provide consular assistance to EU nationals who have no local representation. So this EU-based law is now part of the legal basis for Irish consular assistance.

It appears to date that requests for consular assistance under the EU law have been infrequent, but invariably such assistance has been offered when so requested.

As already seen above, Ireland has no ongoing informal arrangements on consular protection, such as a pooling of resources, with other EU States.

2.4. National law

As yet there is no official or unofficial compilation of Irish consular protection practice on the public record, as the existing detailed procedures are circulated only to Irish consular and diplomatic representatives. However, there is on the Irish Department of Foreign Affairs website a repetition of the summarised practice in the abovementioned booklet *“Travel Safely: Slán Abhaile”* published by the Department as the *“Consular Services Charter”* in 2008. This governmental publication – as seen – has two relevant sections entitled *“Consular Assistance”* and *“Who is Entitled to Consular Assistance”*.

¹²See Symmons, id at p. 350-356.

¹³ This was supplemented by amendment of the Constitution at the time of Irish entry into the EU.

¹⁴ Symmons, id, at p. 345-348.

¹⁵ In a press release of 23 February 1999 (<http://www.dfa.ie/home/index.aspx?id=26854>), it was announced that Ireland intended to implement two Decisions taken by the EU regarding protection for EU citizens abroad which gave legal effect to Art.8c of the EC Treaty regarding consular protection in a place where an EU citizen's own country is not represented. Respecting Decision 95/553/EC, Ireland notified completion of its internal procedures for entry into force of this Decision on 26 July 1999; so this entered into force for Ireland on 3 May 2002. The press release indicated that “[g]iven Ireland's relatively small network of embassies and consulates abroad, implementation of these decisions [would] be of benefit to Irish citizens in countries where [Ireland] has no resident mission”.

Furthermore, as mentioned above, there has been a recent review of Irish consular protection practice as presently contained in the **essentially-confidential circulars issued to consular officials and diplomats** on the matter. This updating of this Irish practice and ‘soft law’ was completed in 2010, but will not result in a consular protection *statute* which was once contemplated by the Department of Foreign Affairs (see above [section 1](#)). However the matter of issue of emergency passports and travel documents by Irish consular officials abroad is covered by Irish legislation, as up-dated in 1998.

The relevant international instruments which bind Ireland in relevant regards are published in the Irish *Treaty Series* or *Official Journal (Iris Offiguil)* and have already been mentioned.

The relevant statutes are few: the **Ministers and Secretaries Act (1924)**¹⁶ which in s.1(xi) sets out one of the responsibilities of the (then) Department of External Affairs as being to deal with the “diplomatic and consular representation of [Ireland] in any country”, the “granting of passports” and “all powers, duties and functions connected with same”. This Act made no reference as such to ‘consular assistance’ functions though this is more generally implied in the latter wording (“functions connected with same”). Thus provision of consular services is a function exercised by or on behalf of the Government under Article 28(2) of the Irish Constitution.

The gist of Irish substantive law on the issue is contained in the **Diplomatic Relations & Immunities Act 1967**¹⁷ (which in its preamble makes it clear that this Act is implementing, inter alia, the *two* International Conventions concerning Diplomatic and Consular Relations). The Vienna Convention on Consular Relations (VCCR) is made part of Irish law by s.6 of the Act. Thus relevant articles in the 1967 Convention, such as Article 7 dealing with exercise of consular functions in a third State, are part of Irish law. **This law may be viewed as giving the basis for Irish nationals to claim diplomatic or consular assistance abroad, though officially Ireland does not provide statutory protection in this regard as a right but rather as a matter of a policy under which consular protection is in practice never refused.**

Most recently the **Passports Act (2008)** deals with emergency travel facilities, empowering in s.15 the Minister to issue an “emergency passport” or “emergency travel certificate” to a person whose passport has been lost, stolen or damaged, or temporarily unavailable, to a person who is reasonably believed to be an Irish citizen and who does not (for reasons stated above) “hold a valid [Irish] passport”. Under s.17(2)(b) of the Act such a passport may similarly be issued “as may be appropriate”. S.28 then amends the **Diplomatic and Consular Officers (Provision of Services) Act of 1993** by stating that the term “an officer of the Minister” includes a person “who performs functions as an officer of the Minister.....in any country or place outside the State”, which person expressly includes [in para(b)] “any officer of the Minister who performs functions as an officer of the Minister in relation to the rendering of consular services”.

There also exists the **Diplomatic and Consular Officers (Provision of Services) Act of 1993** amended recently by s.28 of the Passports Act which deals with the making of regulations for fixing fees (s.3) and other related consular matters, such as oaths and notarial acts abroad.

The law relating to consular protection is, then, in Irish practice, essentially contained in the generalised provisions of the Vienna Convention as brought into Irish law by the abovementioned 1967 Act (and as may be further fleshed out in the

¹⁶ No. 16/1924.

¹⁷ No. 8/1967.

abovementioned circulars to consular and diplomatic officials), and in the relevant EU law. **The treaty aspect is confirmed by the official booklet which says¹⁸ that “[t]he provision of consular assistance by a Diplomatic or Consular Mission is governed by the terms of the Vienna Convention...”**. Thus on the *public record* there is no *detailed* expression of Irish practice in this area, apart from the brief mentions in the official booklet - and so-called “Consular Services Charter” published by the Department of Foreign Affairs in 2008 and individual advice sheets published on the Web by the Department of Foreign Affairs relating to particular States, such as China, Malaysia/Thailand, and Latvia. **In effect, therefore, there are publicised guidelines which govern the particular types of consular assistance given – whether, for example, for repatriation, evacuation, subsistence, emergency situations generally, aid for detainees, aid in the case of death abroad etc.**

Relevant caselaw on the subject does not exist.

2.5. Documentation of consular protection

Relevant documents are listed and summarised in [section 9](#).

2.6. Information to citizens on consular protection

At present the only *public* information on consular assistance is contained on the **Department of Foreign Affairs website¹⁹** and in a small **booklet entitled: “Travel Safely - Slan Abhaile”** published by the Department of Foreign Affairs as a “Consular Services Charter” of 2008. Of greatest relevance in this small booklet are the sections on “Consular Assistance” and “Who is Entitled to [Irish] Consular Assistance?”²⁰

Additionally by way of assistance in the case of natural disasters etc, the Department of Foreign Affairs has set up a “fully equipped **Crisis Centre**” (at Hainault House, Dublin) which can be immediately activated in the event of a major emergency affecting significant numbers of Irish national abroad²¹, including arrangements for special free phone numbers, together with regular up-dates on the situation through the Department of Foreign Affairs’ website²².

In addition to this, Irish missions/consulates abroad (and HQ) are instructed to maintain a **data-base of locally resident Irish citizens** to enable them to assist in contacting such citizens promptly and effectively in the event of a personal or family emergency or to offer assistance in a time of local emergency, such as that necessitating an evacuation.

In Ireland’s comments to the European Commission on its Green Paper, it is stated that Ireland was unconvinced of the need to include the Article 23 provision in Irish passports; and that there was no such section in existing Irish passports.

¹⁸ At p. 22.

¹⁹ www.dfa.ie

²⁰ P. 10-21, 22-26.

²¹ See official booklet, p. 2.

²² At www.dfa.ie

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Ireland has no bilateral agreements with third States which deal with *consular assistance* as such²³ and therefore has none with third States which includes provisions protecting EU citizens or extension to EU citizens' families who are not nationals of a member State; and no negotiations with third states in relation to such matters are known of.

Thus in its response to the EU Commission's Green Paper, Ireland responded that whilst in "emergency situations" it would assist other EU nationals, it could not "agree to a blanket requirement to assist members of their families who are not EU citizens"; and that in such instances it would "look at each case individually". However, **in certain emergency situations Ireland would afford consular protection on an *ad hoc* basis to non-nationals**, as further stated below.

Consular protection is, therefore, in principle reserved for Irish nationals, but can be granted to other EU nationals, on the same basis as to Irish nationals, under (now) Art. 23 of the TFEU which is part of Irish law. For Irish consuls and diplomats an internal set of guidelines exist which flesh out this policy²⁴. It is not clear whether Ireland has informed third States of new EU practice. As seen above (in the Green Paper response) as compared with other EU States, Ireland has claimed to provide "an exceptional level of consular service to its citizens"; so that it has taken the view that it would be "difficult to extend the level of consular protection to other EU nationals". **However, in practice it seems to have been rare for Irish missions to have received such requests from other EU nationals. And approaches from non-EU citizens for assistance by Irish missions have also been rare in practice.**

3.2. Statistical data on consular practice

Statistical data on Irish consular assistance has now been computed on new software (Worldreach) which allows for a detailed compilation of recent statistics, which are to be published each year as part of the annual report [the Irish consular assistance dedicated database (called 'Cabhair' in Irish) was only started in January 2009]. Unfortunately, **at the time of writing this Report any relevant statistics were not publicly available. Nevertheless, according to the Department of Foreign affairs annual Report 2008²⁵, Throughout 2008, the Department provided support in a wide range of areas, including comprehensive advice on travel to particular countries or regions, and assistance in situations of difficulty or distress including crisis situations. During the year, the Department dealt with the deaths of over 200 Irish people abroad and provided effective assistance to [Irish] citizens in other difficult and tragic situations, including repatriation, hospitalisation, victims of crime and detention abroad.**

²³ Cf the two bilateral treaties with the USA of 1950, 1952 and a Protocol of 1998 ["Protocol amending the 1950 consular convention with Ireland" (Treaty doc - 106-43)] which deal solely with exemption of diplomatic and consular personnel from taxation in the receiving State, subject to certain exceptions.

²⁴ For example, by requesting Irish missions especially in more remote locations to maintain a data base of contact details of EU missions in neighbouring States and to maintain cordial links with such missions.

²⁵ <http://www.foreignaffairs.gov.ie/uploads/documents/Publications/annual%20report%202008%20final%20version.pdf>

4. Consular protection in detail

In general Ireland has limited consular and diplomatic representation abroad, which entails that in some instances honorary consuls may have a role to play, as mentioned below. For example, **Irish *honorary* consuls²⁶ are officially deemed competent to provide all consular assistance as mentioned in Decision 95/553/EC** and more generally so under Irish law: for example, under s.2(b) of the Diplomatic and Consular Officers (Provision of Services) Act of 1993 responsibilities there laid down can be carried out not only by a career consul, but also by “an honorary consular officer appointed by the Minister”²⁷.

When Ireland notified completion of its internal procedures for entry into force of this Decision on 26 July 1999, an accompanying press release indicated that “[g]iven Ireland’s relatively small network of embassies and consulates abroad, implementation of these decisions [would] be of benefit to Irish citizens in countries where [Ireland] has no resident mission”.

Only eight Irish consulates abroad are staffed by officials from the Department of Foreign Affairs and offer the full range of consular services²⁸.

4.1. Right to consular (and diplomatic) protection

Ireland prefers the phrase “consular assistance” to that of “consular protection”. As seen above, the main legal basis for consular protection is under the VCCR under the 1967 legislation, to which the Act refers in a Schedule to the Convention, as well as Art. 23 of the TFEU which is also part of Irish law. There are no bilateral treaties to which Ireland is a party which deal specifically with consular protection in a receiving State.

Because of the transposition of relevant international law into Irish law, it may be said that **Irish nationals have in practice the equivalent to a legal right to consular assistance abroad; and that they would not be refused assistance even where they may have ignored official advice from the Department of Foreign Affairs²⁹.**

In principle, Irish consular protection (assistance) is only provided for Irish nationals. As the official booklet says, a person may seek assistance at an Irish Consular Mission or embassy if he/she is an “Irish citizen” (as only is required in Art.5(e) of the VCCR). This principle is also repeated and publicised in the few Web pages which carry consular assistance information on Irish embassies abroad websites.

²⁶ The official booklet (at p. 37-39) contains a list (and phone numbers) of Irish consulates headed by honorary consuls, who will be in a position to offer “some consular assistance”, but may not be in a position to offer the full range of consular services or have an out-of-hours service.

²⁷ In s.1 an honorary consul is defined in the same terms as under Art.1 of the VCCR.

²⁸ Listed in the official booklet, at p. 37.

²⁹ Ireland does not provide consular assistance as a matter of law, but as a matter of policy. Nonetheless, this has been qualified by the official promise (by the Department of Foreign Affairs) that while there is no statutory right, in practice consular assistance by Ireland has “never been refused”. It is for this latter reason that it can be said that there is an “equivalent to a legal right”: in other words, it is as if there were a statutory entitlement. **However, this does not mean that the Irish courts could be accessed, whether at first instance or in an appellate sense were the (unlikely) hypothetical situation of denial of consular assistance in any particular case ever to arise. It could be said that there might, as in the similar common law system in the UK (to which Irish law approximates) be an administrative law remedy which could be pursued via the process of “judicial review”, but this has never been put to the test in Ireland. More likely, complaints of refusal by Irish consular mission would be addressed directly to the Dept of Foreign Affairs.**

Thus a few Irish embassies abroad have set up a web-site page which summarises who is entitled to Irish consular assistance in a particular country, such as those in Latvia³⁰.

However, Ireland as a small European State has limited representation abroad. The official booklet admits this representational limitation by stating³¹:

While Ireland's Diplomatic and Consular network has expanded greatly in recent years, there remain many areas where Ireland has no career consular representation or where services are provided through our Honorary Consular network. In these cases while the Department [of Foreign Affairs] will endeavour to provide all appropriate assistance, provision of the complete range of consular services may not always be possible.

In such case of there being no resident local Irish consular or diplomatic representation in a particular country, or indeed where Ireland has no formal diplomatic relations, Irish nationals, as EU citizens, are told of their entitlement to seek consular assistance “from any other EU country’s consular mission or embassy” where the incident takes place³². This is repeated in some of the consular assistance information pages published on the Department of Foreign Affairs website, such as that for Latvia; and is reinforced by the circulars to diplomatic missions, which indicate that there are, in fact, a number of factors which may prevent an Irish national travelling abroad from availing of assistance *at the nearest Irish mission*. Past official statements, though, have indicated that Ireland believes its nationals “have a very strong preference for dealing with Irish officials in Irish-designated [consular] offices”³³. Despite this, British embassies (through the UK Foreign Office) have been of great assistance to Irish nationals abroad; and Ireland has also, for example, liaised in the past with missions of the Swedish Foreign Ministry³⁴.

Conversely, as far as EU nationals are concerned, Ireland accepts the obligation laid down in Art. 23 of the TFEU to give consular assistance to *them*, on a basis of equality, when they have no consulate/diplomatic mission in the receiving State, just as it would expect for its own nationals abroad, and in respect of which Irish citizens are told in the official booklet, as already indicated above, that if, in a particular country, there is no Irish consulate, an Irish citizen may “apply to any EU mission” in this instance³⁵. This possibility is specifically repeated in the few Irish embassies abroad websites on consular assistance³⁶. Such assistance may be extended to EU nationals whose mission of nationality in a particular State is situated at a considerable geographical distance from them and where there are few other local EU missions³⁷.

Consular protection is, in principle, *not* extended to recognised refugees, stateless persons or persons with residence permits as such even if ordinarily resident in Ireland and holding an Irish-issued travel document (under the international

³⁰ See Irish embassy in Riga, Latvia: <http://www.embassyofireland.lv>.

³¹ Official Booklet, p. 20.

³² Official Booklet, p. 23.

³³ Response to Green Paper, at p. 2.

³⁴ In such cases, the nearest Irish mission would be requested by the Irish Consular Services HQ to alert the EU mission concerned and to negotiate with it how to proceed.

³⁵ Official booklet, at p. 23.

³⁶ Such as that for Latvia (“An EU national from a country which does not have a resident embassy in Riga may also apply to the Embassy of Ireland for assistance”).

³⁷ Thus Irish guidelines to missions indicate that the Foreign Ministry or nearest relevant foreign EU mission of the affected individual would take the lead in requesting Irish consular assistance appropriate to its own consular policies and procedures.

treaty law relating to status of refugees and stateless persons)³⁸. However, the official booklet says that Irish consular officials “will always do their best to provide assistance if requested to by a non-national who is a *resident of, or has longstanding and close ties, to Ireland*” (though adding such persons may *also* get assistance from the diplomatic or consular missions of their *own nationality*)³⁹. Thus at their discretion – and only after the authorities of the host State have agreed – Irish missions *may* give such assistance to such persons. Furthermore, particularly in the case of natural disasters, Ireland would take a more flexible approach to non-EU nationals on a case-by-case basis, particularly if it is one of the few consular missions in a particular State, such as in Timor Leste.

In the case of *dual nationals*, Ireland would take the view that *prima facie* an individual seeking assistance abroad from an Irish mission should have entered that country under an Irish passport to obtain such assistance (following established international consular practice that the passport used to enter the host nation dictates the State for giving consular assistance), as is stated in the few website pages pertaining to particular Irish embassies abroad⁴⁰; and Ireland would decry the idea of ‘consular shopping’ (though even any non-EU individual in trouble abroad might get *informal* assistance from an Irish consulate in a country where that individual’s nationality is not represented). Irish citizens are warned in the official booklet that when travelling abroad on a non-Irish passport, they “may be regarded by the authorities of the country [...] as a national only of [that] second country”⁴¹.

In the case of arrest and detention abroad, the Irish official booklet confirms that Irish consular assistance “aims to support *Irish citizens*”; and that [w]hilst [Irish] consular assistance “may be provided to dual nationals”, particularly in this context, such Irish assistance is “effectively determined by the attitude of the host country in circumstances where the Irish citizen is detained either in the country of their other nationality or is travelling on the passport of another country”⁴² (part of Irish policy on consular assistance generally being not to interfere with a host State’s policies, procedures or laws).

More specifically, the Department of Foreign Affairs information page on emergency consular assistance for Irish citizens in the UK warns that Irish consulates there are prohibited from assisting dual British-Irish citizens seeking consular assistance in the UK under the terms of the VCCR⁴³.

The instructions to Irish missions note that as the VCCR does not refer to dual nationality, it is probable that a party thereto is not required to act under Art. 36 in cases involving an Irish citizen residing in, or visiting, the country of their other citizenship; and that the host country retains the right to refuse to recognise the dual nationality of the detainee, though such cases should be reported to the CAU (Irish Consular Assistance Unit).

³⁸ Thus the Irish website for consular assistance in Riga (Latvia) which says that “[h]olders of Irish refugee travel papers are also entitled to consular assistance from the Embassy of Ireland” there seems to be somewhat misleading.

³⁹ P. 23 (emphasis added). Thus if an Irish mission thought it appropriate to provide assistance in any such case, the advice from the appropriate mission representing the individual’s nationality in the host nation would normally be necessary.

⁴⁰ For example, that in Latvia.

⁴¹ Official booklet, at p. 22.

⁴² P. 15 (emphasis added). This point is also emphasised in instructions to Irish missions. In such cases, direct involvement of Irish officials may be considered inappropriate; and the Irish mission may be able to do no more than liaise with the country of the other citizenship.

⁴³ At <http://www.embassyofireland.co.uk>.

There are particular practices which apply to the *island of Ireland* in such instances due to the close relationship between Ireland and the UK historically, as, for example, presently reflected in the fact that the (Irish) Aliens Act does not apply to UK citizens and in the existence of the common travel zone between the two States.

Thus until 1970, a national of either the UK or Ireland could not avail of consular assistance as such in either State as up to that time Ireland had no consular missions in the UK and vice versa. Ever since then, though, Anglo-Irish practice on consular assistance has been similar due to the historical inheritance into Ireland of pre-independence practice.

Another important and somewhat unique factor in terms of Irish consular protection practice is that even prior to the Belfast agreement in 1998 – and Art.1(IV) in which both Ireland and the UK recognised the right of all those born in Northern Ireland to be recognised as Irish or British or both if they so wished⁴⁴, Ireland recognised all those born in Northern Ireland as being entitled to Irish citizenship in the light of the (then) Irish constitutional claim to the six counties of Northern Ireland⁴⁵, and so, as Irish citizens, entitled to Irish consular protection abroad.

In practice this means that any person born in Northern Ireland – and so possessing potential dual British/Irish nationality – may theoretically seek assistance in either a British or Irish consulate abroad at his or her own choice, though on the few Irish consular assistance websites for particular States it is stated that anyone with dual British/Irish nationality who *entered* a particular country under a *British* passport should apply for assistance to the local *British* mission⁴⁶. Thus although an Irish mission may remain at the disposal of such a dual national, any response for *Irish* assistance may be subject to caution, and to agreement of the authorities of the host nation; and then only after contact has been made with the local British mission (which seemingly have in the past honoured this aspect of special nationality relationship).

It has, indeed, been the Irish experience that residents of Northern Ireland with dual nationality have – if of a nationalistic persuasion – preferred to seek assistance from *Irish* consular representatives abroad. In other words, *Irish* cultural ties have been the prevalent influence as to which national consulate to approach abroad. Furthermore, a recent survey has shown⁴⁷ that Irish nationals have expressed as their top priority the possibility to communicate with someone who understands their own language.

4.2. Assistance in cases of death

There are no definite statistics on how many Irish citizens die abroad every year: partly because many deceased Irish citizens are repatriated to Ireland privately or are interred locally without any involvement from the Irish Department of Foreign Affairs; but **a large number are processed through Irish missions every year, the vast majority involving sudden deaths of Irish holidaymakers abroad**⁴⁸.

⁴⁴ C.R. Symmons, in *Nationalite et Citoyennite en Europe* (eds.) P. Weil and R. Hansen, Editions La Decouverte, (1999) 307, 311.

⁴⁵ Id, at p. 310, 315.

⁴⁶ For example, that for Latvia.

⁴⁷ See Consular Protection: Analytical Report, 2006, p. 13, 24.

⁴⁸ A most recent example of such Irish provision of consular assistance was to the family of Claire O'Dowd, a young Irish girl whose dead body was found in the UK in May 2010 (see *Irish Independent*, 30 April 2010 p. 4).

In the light of its Consular Relations Act, Ireland would accept the obligation under Art. 5(g) of the Vienna Convention on Consular Relations which says that a consular function involves “safeguarding the interests of nationals [...] of the sending State in cases of succession *mortis causa* in the territory of the receiving State, in accordance with the laws and regulations of the receiving State”. This matter is further dealt with in the official guide provided to Irish consuls (who are reminded that Art. 37 of the Vienna Convention stipulates that where a foreign national dies abroad, the relevant authorities of the host country have to advise the relevant resident/accredited mission in that country as soon as possible after the death has been confirmed⁴⁹); and similarly in the official booklet. As already seen, Ireland is not a party to the Agreement concerning the Conveyance of Corpses (1937) nor the Strasbourg Convention on the Transfer of Corpses(1973).

The official booklet states under the heading of “death abroad” that **if an Irish diplomatic or consular mission is informed of the death of an Irish national abroad, “arrangements will be made with the *Garda Síochána* [Irish police – the relevant competent authority] to have the next of kin informed immediately”⁵⁰**. To this end, **the CAU must be informed immediately of the death** - which will immediately begin the task of tracing next of kin and alerting the nearest *garda* station in Ireland⁵¹.

Consular officials will “also **assist with the logistical issues** that arise when someone dies abroad”, such as assistance in dealing with the local authorities to obtain “death and other certificates”; and putting the bereaved persons in “touch with local undertakers who can either make the arrangements to have someone buried (or cremated) locally⁵², or to arrange for the body to be flown back to Ireland⁵³. **Irish missions are told that they have no responsibility for identifying the remains of an Irish citizen, but should cooperate with local authorities if asked to do so in respect of passport details, DNA sampling etc** (see next section). The official booklet further informs families of the deceased person that the **Irish diplomatic or consular mission will keep in contact with the relevant State authorities** “so that the relevant authorities can be kept informed of the position”⁵⁴.

⁴⁹ It seems that recently there have been a number of cases where Irish missions were not so informed.

⁵⁰ At p. 13. This may not be necessary if the deceased is travelling with family members or friends, but essential where he/she is travelling alone or is ordinarily resident in the host State.

⁵¹ In such a case the CAU will assign a ‘case manager’ for purposes of contact. Irish missions abroad are given detailed instructions on the details which the initial notification to the CAU must include, such as a clear and accurate account of the cause and circumstances of death; and about ways to respect the privacy of next of kin.

⁵² Official booklet, at p. 13. This includes matters such as police reports (Irish consular website for China). Irish missions are given detailed instructions on how to liaise with next of kin in such instances, including attending the burial/cremation ceremony/memorial service if requested and to advise on (or even appoint) reputable local undertakers who are English-speaking and may be recommended as being experienced in international transportation of remains. Irish missions are also told that post-mortem procedures (on which they should be briefed) are a matter for the local State authorities which do not involve the missions in normal cases. Likewise, if the death involves legal proceedings being initiated, the Irish mission may, in certain circumstances only, attend court as an observer. Irish missions are also told that if, in rare cases, there are no funds available from any source for an Irish citizen’s funeral arrangements, the local mission should ensure that the authorities of the host country treat the remains in the same way as they would their own citizens, and should have an Irish officer attend in person, keep a record of the location of the remains etc..

⁵³ Id. Irish missions are instructed to encourage relatives to pass details to their appointed undertaker in Ireland in such repatriation cases, whereafter the mission should not normally be involved.

⁵⁴ P. 14.

The official booklet further says⁵⁵: *While [Irish] consular officials will do their utmost to see that the wishes of the dead person and the family are respected with regard to funeral arrangements, and are happy to act as liaison for families with the local [State] authorities and undertakers, there may be some cases where because of local law, weather conditions etc., it may be not possible for family wishes to be fully complied with.*

The official booklet confirms that the **Department of Foreign Affairs can incur no costs** in the above situations, such as repatriation of dead bodies⁵⁶ **“except in very exceptional circumstances”⁵⁷; and conditions for this service will include a “written undertaking to repay all expenses incurred as well as a statutory fee”**. Nor will it provide funds for funeral expenses or for relatives to travel to where the death occurred or to accompany the body to Ireland⁵⁸.

A recent example of the offer of assistance in the case of death abroad arose in the case of a Mr Kinsella who died suddenly after contracting an illness in Africa while on holiday, in the case of whom consular assistance, including possible repatriation of the body, was offered to his family⁵⁹.

4.2.1. Identifying and repatriating remains

As regards identification of remains, the guidelines to Irish missions abroad give detailed guidance, pointing out that the **process of identification is not the responsibility of the mission; but that a mission should be prepared to assist where the competent local authorities (hospitals, coroners or morgues) request such assistance as a matter of urgency for the purpose of contacting and liaising with their counterparts in Ireland over matters such as dental records and DNA sampling.**

The matter of repatriation of remains has been touched on in the previous section. More detailed guidelines are stated in the circulars to Irish missions, reminding them of the importance of maintaining an updated file on information on local regulations relating to this, such as requisite documentation for the body leaving the host State as well as for transit through a third State, so that the repatriation can be smoothly effected⁶⁰. If repatriation is organised by the next of kin, Irish missions are told to supply advice and assistance if required.

In its response to the Green Paper, Ireland stated that as regards identification and repatriation of dead bodies, Ireland would only do so at state expense if *“there is severe hardship to families”⁶¹*; and that it was *“unaware of any EU country which [would] do the same”*. In the light of this, it saw no need *“for a European compensation system”* as this should *“remain within the competence of the Member States”*.

For further details on official assistance in repatriating remains, see [previous section](#).

⁵⁵ Id.

⁵⁶ Or pay expenses for local burial or cremation – website for China.

⁵⁷ See id. any repatriation is at “the sole discretion of the Department and subject to strict conditions which will be set out clearly in each case or pay expenses for local burial or cremation”.

⁵⁸ Official booklet, at p. 14. Additionally, the website for China specifies no assistance is available in connection with any investigation of the circumstances of death (p. 2).

⁵⁹ *Irish Independent*, 10 March 2010.

⁶⁰ The circulars include detailed instructions on encouraging appropriate packaging of the body in transit and carriage of human ashes on aircraft as baggage.

⁶¹ P. 2.

4.3. Assistance in cases of serious accident or serious illness

The official booklet says little on this topic under the heading “[a]ccident/assault victims”, merely indicating⁶² that Irish consular officials “will do everything to assist if [an individual] has been the victim of an accident or assault”. In such cases it says that a consular/diplomatic official may, if it is requested and is possible for the official, **visit the victim in hospital**⁶³.

In the case of accident more generally (and presumably also of incidents of serious illness), the official booklet indicates that Irish consular/diplomatic official will do “everything possible” to assist the affected person⁶⁴, including, if requested and it is possible, a visit by such officials to the individual in hospital, contacting friends and family and help with travel arrangements to get home. It then confirms that such officials can give no legal or medical advice in instances involving accidents, though they **can provide information on local “legal and medical practitioners”, as well as helping with police formalities and contacting the individual’s insurance company, which may be “particularly helpful when there are language difficulties”**.

Such assistance is spelt out in more detail in some of the few Irish embassies abroad websites, such as that for China which confirms that the Irish mission there can offer general advice on local medical services, provide a list of English-speaking doctors, assist in liaising with doctors or hospitals, assist in arranging for interpretation (if necessary), advise friends or relatives about accidents or illnesses and assist in arranging repatriation to Ireland (see further below on this). It also confirms (as also is the case in other analogous situations) that the Irish embassy cannot pay medical or hospital bills, provide medical advice, pursue insurance companies for compensation or pay for visits by relatives.

The official booklet also deals specifically with assistance in the case of an accident causing death, saying that in some cases, such as where the death has been the result of crime or a car accident, the Irish consular or diplomatic mission may need to remain in contact with the victim’s relatives “for some years as police or judicial investigations progress”; but it confirms that such **missions have no investigative powers in instances of death abroad; and that all investigations and enquiries into crimes committed abroad are the responsibility of the local police and judicial authorities**⁶⁵.

As regards financial arrangement following death abroad, diplomatic missions are warned that the **Department of Foreign Affairs does not provide funds for repatriation of bodies to Ireland; and that the expenses for same are solely the responsibility of the next of kin**⁶⁶. However, where “absolutely necessary”, the Department may facilitate an advance of funds in respect of part or all the expenses under its “Advance of Funds” procedure.

In the instance of ill health and where (exceptionally) repatriation is necessary, the official booklet says⁶⁷ **that if an individual is unable to access funds, the**

⁶² P. 11.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Official Report at p. 14.

⁶⁶ It is pointed out that in many cases, such as sudden deaths of holiday-makers, the costs of repatriation will be covered by insurance, in which case the Irish mission only has a liaison function.

⁶⁷ At p. 13. See also the official booklet, at p. 6 (“*The Department of Foreign Affairs and its consular officials do not have funds to pay medical or other expenses incurred by Irish citizens abroad*”). It is not known whether payment has been asked for by Ireland respecting assistance given to other EU nationals in this or other similar instances below.

Department of Foreign Affairs may assist with the actual costs of repatriation subject to a number of conditions, which include an undertaking to repay costs incurred in due course and a small statutory fee for provision of the service. More generally, the Department of Foreign Affairs and Irish diplomatic/consular missions will also assist in making enquiries about the welfare or whereabouts of Irish nationals abroad, in particular facilitating contact between the person making the enquiry and the appropriate police authority in the country concerned, but without carrying out detailed investigations⁶⁸.

4.4. Assistance in cases of arrest or detention

There are thousands of Irish citizens in prison throughout the world at any one time, the majority being in the UK. Irish practice here would follow the general principles of consular protection under Art. 5 of the VCCR⁶⁹; as is also laid out in detail in instructions to Irish missions, including especially Art. 36 on notifications of arrest. **Thus the official booklet confirms⁷⁰ that Irish citizens who are arrested and imprisoned abroad are entitled to seek consular assistance; and on such request, it will be provided to “all Irish citizens in a non-judgemental manner, regardless of the nature of the alleged offence, whether the person is found guilty, on remand or already sentenced by a court of law”⁷¹.** There are detailed up-dated instructions to Irish diplomatic missions on this, indicating that Irish citizens arrested or detained abroad are entitled to seek and receive appropriate consular assistance from the nearest Irish consular post. Such assistance will be provided “immediately” after the local Irish mission is informed⁷². These instructions include consular assistance in issues concerning deportation (where no formal local charges are brought).

The official booklet confirms that a detained Irish citizen has a right to request that his/her detention overseas is communicated to his/her local diplomatic mission or consulate⁷³. Thus Irish practice would follow Art. 36 of the VCCR, as is confirmed in instructions to Irish missions (including the right of a consular visit to the detainee and to communicate with him, to inform him of his rights, and, if necessary arrange for legal representation and seek confirmation that the citizen has been informed of his/her rights). **Only if it is possible, and if the host country prison authorities allow it, may a consular officer visit the detained person⁷⁴.** The instructions to missions include detailed provisions on such consular visits⁷⁵, or if a visit is not possible, to arrange for telephone contact. In most cases visits by consuls will only be possible after the Irish citizen has been formally charged with an offence⁷⁶. **During such a visit (or afterwards by confidential letter) consular officials are instructed to ensure that**

⁶⁸ Id. at p. 17.

⁶⁹ Official booklet, p. 15

⁷⁰ Id.

⁷¹ Though the instructions to missions indicate that where an Irish citizen is detained on a terrorist charge, it may not be appropriate for the mission to become actively involved because of possible interference with another State’s anti-terrorism laws.

⁷² Consular assistance website for China at p. 2.

⁷³ At p. 15. The consular assistance website to distressed Irish citizens in China specifically warns Irish nationals that in many cases the local authorities will only contact the Irish embassy or a consulate if the arrested individual asks them to do so

⁷⁴ See official booklet, at p. 11.

⁷⁵ The instructions to diplomatic missions indicate that a request from detained Irish citizens for a visit should be facilitated as soon as possible insofar as the resources of the mission and local conditions permit.

⁷⁶ Official booklet, at p. 15.

the detainee is fully and clearly advised of his/her rights and any local legal aid system.

A consular official then **can** also⁷⁷:

- assist in getting information for the Irish citizen detained about prison arrangements;
- provide the individual with information about (English-speaking) local lawyers (for this purpose missions are instructed to keep on file a list of such lawyers);
- provide general information on how the host country's legal processes work (including any local complaints procedure);
- arrange for the individual's next of kin to be informed of the detention (if desired) (for this purpose the CAU may have to be alerted to trace such next of kin, particularly if the detainee is suffering from mental illness);
- give the individual's family information regarding the prison and legal arrangements in the country of detention⁷⁸;
- help the individual keep in contact with friends and family and arrange for funds provided by them to be transferred to the detained person safely (processing of financial arrangements etc);
- ensure that the detained person is not discriminated against as a foreign prisoner and that any of the detained person's concerns regarding safety and treatment, including any health concerns, are brought to the attention of the relevant authorities within the prison system as soon as is necessary⁷⁹ (instructions to missions include the same issue, including making enquiries about an Irish citizen's right to access to a lawyer and right to receive a fair and just trial);
- put the individual in touch with relevant voluntary agencies such as the Irish Commission for Prisoners Overseas (an agency of the Irish Bishops' Conference which helps overseas prisoners and their families, funded by the Department of Foreign Affairs);
- give information on whether it would be possible for service of part of the sentence in Ireland under the Transfer of Sentenced Persons Convention. If the country of detention is a party to the Strasbourg Convention on the Transfer of Sentenced Persons, an Irish consular official will supply information on the possibility of applying to serve the remainder of the sentence in Ireland⁸⁰ (there are also detailed instructions to missions on this matter).

The instructions to missions emphasise that in all instances the personal wishes of the detainee must be fully respected in such matters; that details of each detainee should be kept on a database; and that contact details should be left with him/her or the prison authorities in the event that assistance is required at a future date.

The official booklet warns of what Irish diplomatic or consular officials **may not do** in the case of arrest or detention of an Irish citizen⁸¹; namely: **no ability to:**

- pay his/her fines or to give the arresting authorities guarantees on the citizen's behalf;

⁷⁷ Id., at p. 15/16.

⁷⁸ Including, by way of example, entitlements to visits, mail, and other facilities (see consular assistance website for China).

⁷⁹ And to pursue with the prison authorities any "complaints about ill-treatment or discrimination" (consular assistance website for China, p. 2).

⁸⁰ Official booklet, at p. 17.

⁸¹ Id. at p. 16.

- offer formal legal advice or formally recommend or pay for a lawyer (though missions should advise the detainee to appoint his lawyer as soon as possible);
- initiate court proceedings or interfere with local judicial process on the citizen's behalf⁸²;
- conduct criminal investigations on the citizen's behalf⁸³;
- support the individual financially while he/she is in prison (though "some help with the bare necessities" may be made available in "developing country" prisons)⁸⁴.

The instructions to missions advise that detainees and their next of kin should be informed at the outset of these limitations; and tell missions to report any limitation of a detainees rights of consular access to the CAU.

Following any conviction abroad which leads to a sentence in prison, a consular visit may, if the individual so wishes, be made at least once a year (Irish missions are encouraged, as far as possible, to maintain close contact with Irish prisoners locally detained and to keep an updated database on all known prisoners); and **a small hardship fund is reported to be made available in the future to help overseas prisoners** "who find themselves in particularly onerous or deprived circumstances owing to local prison conditions"⁸⁵.

4.5. Assistance to victims of violent crime

The official booklet indicates that the same consular assistance may be extended to the victim of an assault abroad (as has been indicated above in the case of an [accident](#)), such as a **consular visit to an hospital, information on legal advice or doctors, helping with police formalities, including language difficulties and assistance in contacting the victim's insurance company; and helping over contact with friends and relations and over possible travel home**⁸⁶.

Most particularly the official booklet has a section on "**victims of rape/sexual assault**"⁸⁷. Victims abroad of such crimes who look for consular assistance are treated in complete confidence, and are advised to seek Irish diplomatic/consular assistance immediately after the assault. The Irish mission will then endeavour to put the victim in immediate contact with either a local counselling service, or, if that is not possible, with an Irish counselling service. Irish officials will also assist with any police or medical formalities which are necessary as well as with any travel insurance company; and will contact the victim's family and assist with travel arrangements back to Ireland if that is wanted. Irish officials will also give information on local English-speaking lawyers, but will not (as also not in other situations) formally recommend, or pay for, lawyers or legal advice⁸⁸.

⁸² However, the instructions to missions indicate that if a mission is contacted by a prisoner or his relatives, the Department of Foreign Affairs may intervene on *humanitarian* grounds in exceptional circumstances, such as for compassionate reasons.

⁸³ Or interfere with or influence the local judicial system (consular assistance website for China, at p. 2).

⁸⁴ Instructions to missions remind officials that there are no departmental funds available to financially support a detained citizen in any way, though the mission may help transfer funds to the detainee's prison account via the usual Advance of Funds process or refer next of kin to seeking assistance from the Department of Social & Family Affairs in Ireland or from the Irish Council for Prisoners Overseas.

⁸⁵ Official booklet, at p. 16.

⁸⁶ *Id.*, at p. 11.

⁸⁷ *Id.*, at p. 12.

⁸⁸ *Id.*, at p. 12.

Thus the embassy website on consular assistance in China indicates that the embassy will not only inform family or friends, but also help any transfer of funds from home, provide a list of English-speaking lawyers, assist in liaison with the local police, and assist in arranging repatriation to Ireland.

In Ireland itself there is an Irish Tourist Assistance Service (ITAS) which can offer support and practical assistance to victim of crime there.

4.6. Relief and repatriation of distressed citizens

In the case of **financial distress of Irish citizens, diplomatic or consular officials may advise on arrangement for a relative or friend to transfer money from Ireland through well-known commercial agencies**⁸⁹ (and make contact in Ireland for such purposes if wanted). If a commercial channel is not available, a consular official may contact relatives or friends in Ireland and ask them to send funds through the Department of Foreign Affairs. A small statutory fee applies in the latter case⁹⁰. No loans for hotel or other expenses may be made by the Department.

As regards repatriation in cases of financial distress or indeed other hardship experience abroad, the official booklet states⁹¹: “[o]n rare occasions, repatriation may be necessary because of ill-health or for other pressing reasons”; and if in such cases an individual is unable to access funds through the sources already mentioned above (such as family): *“The Department [of Foreign Affairs] may assist with the actual costs of repatriation, subject to a number of conditions. These conditions include an undertaking to repay in due course the expenses incurred by the Department. There is also a small statutory fee for provision of this service”*.

4.6.1. Natural disasters

Under the heading of “major emergency abroad”, the official booklet refers to the increasing risk of Irish nationals being involved in events ranging from terrorist attacks to “natural catastrophes” or “outbreak of war”⁹². In such instances, **The Department of Foreign affairs has in place an “emergency plan” which will be activated in the event that a major emergency occurs abroad “affecting significant numbers of Irish [nationals]”**⁹³.

Additionally by way of assistance, the Department of Foreign Affairs has, as seen in [section 2.6](#), set up a **“fully equipped Crisis Centre”** which can be immediately activated in the event of a major emergency affecting significant numbers of Irish national abroad⁹⁴, including arrangements for special free phone numbers, together with regular up-dates on the situation through the Department of Foreign Affairs’ website⁹⁵. Thus arrangements are in place in the case of an emergency to ensure that there is sufficient capacity to handle relatives’ queries and to give them reliable and accurate information.

⁸⁹ Official booklet, at p. 12.

⁹⁰ See First Schedule, Part 1, of the Diplomatic and Consular Fees (Amendment) Regulations 2004, ref. nos 6/7 (arranging repatriation of a person or group) and 8 (arranging collection of funds for a destitute person outside the State seeking to return home).

⁹¹ At p. 13. See, for fees in such a case, ref. no. 8 under the First Schedule to the regulations of 2004 mentioned above.

⁹² At p. 20.

⁹³ Id.

⁹⁴ Id.

⁹⁵ At www.dfa.ie

The Department also has in place an “**Emergency Consular Assistance Team**” which will be ready to travel to the scene of the emergency to provide assistance, in addition to that of the local mission, to Irish nationals who have been affected⁹⁶.

Irish nationals are instructed to contact the nearest Irish diplomatic or consular mission in any major emergency and to monitor the Department’s information on any evacuation plans⁹⁷; and to inform, *inter alios*, the nearest Irish mission of any injuries or missing persons.

In such emergency situations, particularly, Irish consular assistance may be extendible to non-Irish citizens, especially, as seen, if those persons have no local consulate/diplomatic mission of their nationality. Similarly, in a converse fashion, because, as seen, Ireland as a small State has limited diplomatic and consular representation abroad, Ireland would be particularly reliant on other EU States with local representation to help Irish nationals in a major emergency, as for example, on Spain in the case of recent landslides in Peru; and on the UK in the case of unrest in Bangkok in 2008.

Additionally **Ireland would work closely on such occasions not only with its EU consular partners and the Foreign Ministry holding the EU Council Presidency at the time, but also with other friendly nations with which it has close ties, such as Canada and Australia**, as happened for example during unrest in the Lebanon, particularly where an evacuation is needed⁹⁸ and during the Asian Tsunami incident.

4.6.2. Terrorist acts

The same principles of assistance mentioned above would apply to terrorist attacks on Irish nationals abroad, in which situation Ireland would again **work in collaboration with other EU nations or other States with which it has close ties**, as for example, in the case of the Bali bombings and incidents in Iraq.

A particular recent incident concerned the kidnapping of an Irish aid worker by insurgents in Darfur in 2009. Co-operation with other friendly nations has been evident in the case of terrorist incidents.

4.6.3. Pandemics

The same principles of assistance would apply as in the case of relief of distressed citizens of the Union and natural disasters as set out above.

4.6.4. Military conflicts

The same principles, as stated above in other emergency situations, would apply to military conflicts as in the case of any relief of distressed citizens of the Union whether from natural disasters or terrorist attacks as a “major emergency” abroad⁹⁹. In particular Irish citizens in a war zone would be asked to monitor the Department of Foreign Affairs website¹⁰⁰ for on-going information on the emergency and details of any

⁹⁶ Id.

⁹⁷ Id., at p. 21.

⁹⁸ Indeed, the Irish comment on the EU Green Paper on Consular Protection in Third States (see above) was that in regard to advice to travellers, Ireland already coordinated with the UK, Australia, New Zealand and the USA because Irish travelling public tend to congregate with nationals of those countries abroad and “*hence [Irish] advice is often similar to those countries*”.

⁹⁹ See official booklet(at p. 20) which refers to the “outbreak of war”.

¹⁰⁰ www.dfa.ie.

evacuation plans¹⁰¹. During the invasion of Georgia 12 Irish citizens were evacuated from that territory.

4.6.5. Financial advances

This matter has already been touched on under several related headings above, such as repatriation in the case of ill health, arrest or detention. **The Department of Foreign Affairs may, on rare occasions where an Irish national has become destitute and repatriation is necessary, assist with the actual costs of repatriation subject to a number of conditions if an individual is unable to access funds through the normal sources, such as commercial agencies¹⁰². These conditions include an undertaking to repay the expenses “in due course”¹⁰³; and in practice any reimbursement for official financial advances would never be waived, even for small amounts. A small statutory fee is payable for provision of such a service.**

Otherwise, the official booklet states¹⁰⁴ that when Irish nationals abroad find themselves in financial difficulty, including where money or credit cards are lost or stolen¹⁰⁵, Irish diplomatic and consular missions may be able to advise on arranging through a relative or friend in Ireland the transfer of funds through a well-known commercial agency, such as Western Union; and to provide details of how such funds can be transferred; and helping contact the individual’s travel insurer for such purpose.

Where a commercial channel is not available, a consular officer may be able to contact friends or family of the affected individual in Ireland to send out funds through the Department of Foreign Affairs, for which service a small statutory fee is payable¹⁰⁶. The Department is not able to make loans in such circumstances, or to pay hotel or other expenses incurred.

There is official indication that Ireland would in practice offer such a service to other EU nationals in this particular matter, but only if it had an official undertaking from the locally-unrepresented State that the funds would be reimbursed.

4.7. Consular fees

Fees are charged for certain consular services such as issue of passports, visas, foreign birth registrations, and administering oaths, fixed by the statutory instrument issued under s.3 of the Diplomatic and Consular (Provision of Services) Act, 1993, and vary according to the type of assistance claimed¹⁰⁷.

However, in practice no distinction is made for this purposes between Irish nationals and other EU citizens, although s.3(3) of the abovementioned Act does specify that the Minister may make regulations which “may differentiate between different classes of persons [to whom the Act applies] and between different countries and places”.

¹⁰¹ See official booklet, at p. 21.

¹⁰² Official booklet, at p. 13.

¹⁰³ Id.

¹⁰⁴ Id., at p. 12.

¹⁰⁵ Id., at p. 11.

¹⁰⁶ Id., at p. 3.

¹⁰⁷ As may be specified in “regulations”: see s. 3 thereof. The regulations are set out in the Diplomatic and Consular Fees (Amendment) Regulations 2005 and the previous regulations made in the similarly titled statutory instruments of 2001 (S.I.No.117 of 2001) and of 2004 (S.I.No.82 of 2004): see further [Section 9](#) below. The exact fees for each particular service are set out in schedules to these orders.

4.8. Reimbursement of the assisting State

As seen above, under the heading of financial advances in section 4.6.5, there is official indication that Ireland would in practice offer such a service to *other EU nationals* in this particular matter only if it had an official undertaking from the locally-unrepresented State that the funds would be reimbursed. Though **in some cases where Ireland has spearheaded an emergency evacuation – such as from Lebanon and Georgia – it did not seek reimbursement from either its own nationals or those from other countries in the EU or elsewhere.**

4.9. Case studies in particular problematic practices

These have already been mentioned under particular consular protection headings.

5. Emergency travel document (ETD)

The official booklet advises¹⁰⁸ that if an Irish passport is lost or stolen abroad, Irish officials will provide the individual with an emergency passport to allow him/her to complete the journey, or to issue an emergency travel document to enable the individual to return home, on provision of a police report as evidence of the loss and also some proof of identity and Irish citizenship. In the case of *deportation* of an Irish citizen abroad, instructions to missions indicate that missions should facilitate an ECT or emergency passport where relevant local authorities approach them on deporting such an individual.

The official booklet warns that while every effort will be made to provide replacement travel documents “without delay”¹⁰⁹, there may be some time lapse when passports are reported lost over weekends or at destinations which are distant from the nearest Irish diplomatic or consular mission.

The rules relating to issue of emergency travel documents are covered in Pt 2 of the Passports Act 2008. Firstly, under s.15 thereof, the Minister of Foreign Affairs is authorised to issue a so-called “**emergency passport**” (for a period of less than one year) to an Irish citizen where the passport issued to that person has been lost, stolen or damaged, temporarily unavailable or the person does not hold a valid passport. In such cases the individual must provide evidence of his or her intention to undertake travel immediately (for which a passport is required) and show that “by reason of the circumstances of urgency in relation to the application, there is insufficient time in which to issue a passport other than an emergency passport to the person”.

Under s.17(2)(b) of the Act, such a passport may be issued “as may be appropriate”. S. 28 then amends the Diplomatic and Consular Officers (Provision of Services) Act of 1993 by stating that the term “an officer of the Minister” includes a person “who performs functions as an officer of the Minister....in any country or place outside the State”, which person expressly includes (in para (b)) “any officer of the Minister who performs functions as an officer of the Minister *in relation to the rendering of consular services*”¹¹⁰. It appears that such an officer can include all Irish honorary consuls, though **only Irish embassies and three honorary Irish consuls abroad (those in Hong Kong, Perth and Auckland) can issue Irish passports.**

Additionally, the Minister may issue an “**emergency travel certificate**” for such period as he considers appropriate to enable the person to undertake the journey in respect of

¹⁰⁸ At p. 11.

¹⁰⁹ Id.

¹¹⁰ Emphasis added.

which it is issued and in such form as he may specify, and if the application is accompanied by such information and documents as are required. For issue of such travel certificates, an applicant must show that there is reasonable cause to believe he/she is an Irish citizen, that the passport that was issued to him/her has been lost, stolen, damaged or is temporarily unavailable; or that he/she does not hold a valid passport; and that the person provides “evidence of his or her intention to undertake travel immediately, but, by reason of the circumstances of urgency, the person is unable to comply with the requirements of the Act regarding issue of a passport.

Such consular assistance is usually referred to on information sheets/websites for particular countries¹¹¹.

6. Relevant diplomatic protection

As in instances of consular assistance above, normally diplomatic protection would only be given to Irish nationals (or EU citizens) under the same principles as those stated above.

This would be the same as in the case of consular assistance to Irish and other EU nationals; and indeed the official booklet and website circulars frequently refer simply to an Irish “mission” and/or collectively to a “diplomatic or consular mission” (see above *passim*).

7. Exercise of consular protection for expats

One rather unique feature of Irish diplomatic and consular protection abroad stems from the liberality of Irish nationality laws accorded to those born abroad of Irish descent in the light of the past Irish ‘diaspora’ under the *jus sanguinis* rule, according Irish citizenship through ancestral blood ties¹¹². Thus for example a US citizen of Irish descent who has validly made a valid application for ‘foreign births registration’ to obtain Irish citizenship¹¹³ may avail of Irish consular assistance abroad despite his/her lack of other ties with Ireland.

Generally speaking, support by Irish missions is also given for Irish expatriates; such as in matters of **notarial assistance and civil registries**: fees are charged for such services. Ireland is a party to the 1961 Hague Convention abolishing the requirement for foreign public documents to be legalised for countries which are parties to the convention¹¹⁴.

8. Summary

As seen above, Ireland is a party to the main international treaty law on consular relations which has been made part of domestic law, but has entered into no bilateral treaties on consular *assistance* as such. Consular assistance co-operation in its case is partly based on a common cultural background insofar as Irish nationality laws take a liberal view in bestowing citizenship on persons born in Northern Ireland or abroad where there is descent from an Irish ancestry.

Assistance to EU citizens is provided according to Article 23 TFEU, concerning which there is little or no Irish practice. For evacuation situations in international conflicts,

¹¹¹ See, e.g., the one for China which outlines the requirements for the issue of such temporary travel documents .

¹¹² See Symmons, *op.cit.* at p. 315-316.

¹¹³ Official booklet , p. 24/5.

¹¹⁴ Official booklet, at p. 33.

Ireland has cooperated on an ad hoc basis with its EU partners and other friendly States (such as Australia and the USA), which foreign assistance has proved to be very helpful to Ireland.

The legal framework has not been extended by bilateral arrangements to cover the delegation of consular or diplomatic protection under Article 23 of the FEU Treaty, or to provide support for family members who are not nationals of a Member State.

9. List of Important Documents

1.

Title: Ministers and Secretaries Act, 1924

Publication reference: No. 16/1924

Date of validity: 1924

Short summary: assigns, in s.1(xi) certain public services, including diplomatic and consular representation, granting of passports etc to the (then) Department of External Affairs (now Department of Foreign Affairs).

2.

Title: Diplomatic Relations and Immunities Act, 1967

Publication reference: No.8/1967

Date of validity: 1967

Short summary: provides for both the Vienna Conventions on Diplomatic Relations and Consular relations to have the force of law in Ireland.

3.

Title: Diplomatic and Consular Officers (Provision of Services) Act, 1993 (including statutory instruments made under it by regulations in the Diplomatic and Consular Fees Regulations (S.I.No.117 of 2001) and as amended by the Diplomatic and Consular Fees (Amendment) Regulations 2004 (S.I.No.82 of 2004) and the Diplomatic and Consular Fees (Amendment) Regulations 2005 (in force August 1 2005).

Publication reference: No.22/1993

Date of validity: one month after date of passing – January 21, 1994

Short summary: empowers the Minister for Foreign Affairs to make regulations for the fixing of fees for consular services for the purpose of making oaths, affidavits or notarial acts (eg, fees have been set for the verification/ translation of documents, arranging repatriation, collection of fees for a destitute person outside the State, grant of any marriage certificate abroad, certain certificates, issue of passports/emergency passports and visas, administering oaths etc).

4.

Title: Passports Act 2008;

Publication reference: No.4/2008;

Date of validity: set by commencement order for November 1st, 2008 (other than ss.8 & 9 of s.14);

Short summary: deals in Part 2 with issue of passports (including emergency passports and emergency travel certificates in the case of lost/stolen passports etc; and in Part 3 amends aspects of the Diplomatic and Consular Services Act of 1993.

5.

Title: Travel Safely: *Slán Abhaile*.

Date: 2009

Short summary: This document published by Department of Foreign Affairs outlines Irish practice on consular assistance.



Italy - Italia (IT)

1. Introduction

This Report contains the legal framework and national practice of Italy on consular protection as of 30 June 2010. Italy can be considered as a Member State where complete information can be found on the legal framework and practice on consular protection. The Report is based on handbooks on international law¹; the website of the Italian Ministry of Foreign Affairs²; the official legal information system collecting the international Treaties ratified by Italy³; interviews with officials from the Italian Ministry of Foreign Affairs⁴; related internal documents (in particular, concerning the practical implementation of legal rules).

1.1. Terminology - National acronyms and definitions

Ministero degli affari esteri: Ministry of Foreign Affairs

Unità di Crisi: Crisis Unit - created in the mid-1980s with the institutional task of assisting Italian nationals and protecting Italian interests in emergency situations abroad.⁵

Ministero degli affari esteri, Annuario statistico (Ministry of Foreign Affairs, Statistic Report) Report about the main acts adopted by the Ministry of Foreign Affairs in the current year and in some selected previous periods⁶

Dipartimento per le politiche comunitarie (Department for European Affairs): Department established at the Presidency of the Council of Ministers

Corte Costituzionale: Constitutional Court

Tribunale amministrativo regionale – Tar: Administrative Court of first instance

Consiglio di Stato: Administrative Court of Appeal

Gazzetta Ufficiale: Official Journal

¹ - Conforti B., *Diritto internazionale*, Napoli, 2006

- Ciciriello M.C., *Appunti delle lezioni di diritto internazionale*, Napoli, 2006

- Gaeta P., Cassese A. (a cura di), *Diritto internazionale*, Bologna, 2006

- Gioia A., *Diritto internazionale*, Milano, 2008

- Giuliano M., Scovazzi T., Treves T., *Diritto internazionale*, Milano, 2005

- Monaco R., *Manuale di diritto internazionale pubblico*, Torino, 1998

- Tanzi A., *Introduzione al diritto internazionale contemporaneo*, Padova, 2003

² www.esteri.it

³ <http://ittra.esteri.it>

⁴ Prof. Ersilia Spatafora (*Ministero degli Affari Esteri – Servizio del Contenzioso Diplomatico e dei Trattati*), with Cons. Marilina Armellini (*Ministero degli Affari Esteri – Direzione Generale per gli Italiani all'Estero*) and with Dr. Nicola Minasi (*Ministero degli Affari Esteri – Unità di Crisi*) were interviewed. All responsibility for omissions and mistakes remains with the Author of the Report.

⁵ According to the MFA website “*The Crisis Unit of the Italian Ministry of Foreign Affairs works in close concert with the analogous facilities of other Union members, and is able to exchange and compare information and useful data with them as a result, above all, of the use of advanced technologies that allow for low-cost, high-tech linkage whenever necessary, employing various software programmes and video-conferencing techniques*”

(http://www.esteri.it/MAE/EN/Ministero/Servizi/Imprese/Unita_Crisi/Cosa_e/Rapporti_Istituzionali.htm)

⁶ www.esteri.it/MAE/IT/Ministero/Pubblicazioni/Annuario_Statistico/

2. Legal framework

Italy's legal framework consists of laws, multilateral Treaties, bilateral Treaties, obligations under European treaties, informal agreements and State practice.

2.1. International law

Italy is a Party to the following multilateral Conventions:

- Vienna Convention on Consular Relations (and relative Protocols): since 4 October 1967 through Law No. 804 of 9 August 1967 (*“Ratifica ed esecuzione delle Convenzioni sulle relazioni diplomatiche e sulle relazioni consolari, e dei Protocolli connessi, adottate a Vienna, rispettivamente il 18 aprile 1961 e il 24 aprile 1963”*). No reservations have been made.
- Vienna Convention on Consular Relations (and relative Protocols): since 4 October 1967 through Law No. 804 of 9 August 1967 (*“Ratifica ed esecuzione delle Convenzioni sulle relazioni diplomatiche e sulle relazioni consolari, e dei Protocolli connessi, adottate a Vienna, rispettivamente il 18 aprile 1961 e il 24 aprile 1963”*).
- Convention on the Transfer of Sentenced Persons adopted in Strasbourg on 21 March 1983 - Italy has ratified this Convention by Law No. 334 of 25 July 1988 (*“Ratifica ed esecuzione della Convenzione sul trasferimento delle persone condannate, adottata a Strasburgo il 21 marzo 1983”*).

Italy is a party to the Agreement on the conveyance of corpses signed in Berlin on 10 February 1937 ratified on 21 December 1937 (R.D. No. 1379 of 1 July 1937).

Italy is not a party to the Council of Europe Convention on the Transfer of Corpses of 26 October 1973.

Italy has concluded 16 bilateral treaties on consular protection.

2.2. Transposition of international law into national law

In Italy, while **international consuetudinary law is part of the law of the land** (Article 10 par. 1, Const.), different rules exist for conventional international law.

Unlike Art. 10, Const. for customary international law, the Italian Constitution does not contain general rules directed towards providing for adaptation to Treaties (and to the derived sources, as the acts of international organizations). Some Italian scholars in international law (Quadri) have demonstrated how Art. 10, Const. even concerns the introduction of conventional rules into domestic law; in any case, the prevalent doctrine affirms that: a) the Italian Constitution has clearly and expressly limited Art. 10 Const. to general international law, as is evident from the preparatory works of the same Constitution; b) given, in each year, the high number and the different subjects of the various Treaties, their direct introduction into the Italian legal system with the “role” of constitutional rules cannot be admitted (general international law – introduced by the cited mechanism of Art. 10, Const. – has, in fact, that “role”); constitutional jurisprudence and the other Italian case law are then clear in the indicated sense.

In general, international Treaties are not, therefore, directly applicable in Italy, because this requires an act (adopted by the Parliament) of ratification on the basis of Article 80, Const.⁷

⁷ Conforti B., *Diritto internazionale*, cit., p. 289 and ff.

2.3. Implementation of European law into national law

Concerning the transposition of the European law into the Italian legal system, the evolution of Italian internal solutions has been problematic and complex. The question has concerned, in particular: a) the base of the legal value of European law within the Italian system; b) the effects of the infringement by Italian Acts with reference to the European law; c) the pertinent relief of the kind of European Act in question (*Regulation or Directive*)⁸.

For the first aspect, the Constitutional Court (Judgment No. 14 of 7 March 1964) finds the European law is effective in Italy under Art. 11 of the Constitution, that states: “*Italy repudiates war as an instrument offending the freedom of other peoples and as a means for settling international disputes; it agrees to limitations of sovereignty where they are necessary to allow for a legal system of peace and justice between nations, provided the principle of reciprocity is guaranteed; it promotes and encourages international organizations furthering such ends*”; for the Court (according to some Italian scholars, for example, Monaco)⁹ the limitation allowed by Art. 11 to the sovereignty of the Italian State and for the constitutional rules concerning the distribution of the jurisdictional, administrative and legislative powers (in order to promote international “organizations” aimed at ensuring “peace” and “justice” between Nations) legitimate the Italian legislation implementing the Treaties establishing the European Communities by introducing a derogation to the Italian constitutional provisions concerning the organization of the jurisdictional, administrative and legislative functions in the measure necessary to insure the goals indicated by Art. 11. That jurisprudence was confirmed by the Constitutional Court in its Judgment No. 183 of 27 December 1973, , however, establishing that the above mentioned limitations find an obstacle in the necessary requirement to respect the constitutional provisions concerning the main principles of the Italian Constitution and the fundamental rights of the human being¹⁰.

Nonetheless, these decisions affirmed that the infringement of European rules implied only a responsibility for the Italian State before the European Communities, but did not deprive the internal legislation to the contrary of efficacy¹¹ (admitting the possibility of the principle of “*lex posterior derogat legi priori*”¹²). But, the European Court of Justice indicated in its decision in **Flaminio Costa v E.N.E.L. (Case 6/64)** that the Member States had to insure the full effectiveness of European rules, with the result that it considered invalid and deprived of any efficacy the conflicting internal regulations. In the *Industrie Chimiche* decision (Judgment No. 322 of 30 October 1975), the Constitutional Court found, therefore, that Art. 11, on the one hand, represents the basis for the effectiveness of European law within the Italian legal order and, on the other, it is, moreover, a constitutional parameter for evaluating the compliance of the Italian rules with regard to European rules. According to this decision, Italian legislation conflicting with European law should be declared to be constitutionally invalid only by the Constitutional Court¹³.

However, the jurisprudence of the Court of Justice observed in the *Simmenthal* judgment (Case 106/77 of 9 March 1978) that this system contrasted with Community

⁸ Gaia G., *Relazione generale. La Corte costituzionale di fronte al diritto comunitario*, in Daniele L., *La dimensione internazionale ed europea del diritto nell'esperienza della Corte costituzionale*, Napoli, 2006, p. 255 ff.

⁹ Ballarino T., *Manuale breve di diritto dell'Unione Europea*, Padova, 2007, p. 145 ff.

¹⁰ Gaia G., *Relazione generale. La Corte costituzionale di fronte al diritto comunitario*, op.cit., p. 258.

¹¹ Gaia G., op.ult.cit., p. 258 and 259.

¹² Ballarino T., op.cit.

¹³ Gaia G., *Relazione generale. La Corte costituzionale di fronte al diritto comunitario*, op.cit., p. 259.

principles directed towards granting full efficacy to European law within each national legal order¹⁴.

Therefore, the Italian Constitutional Court, in its Judgments No. 176 and No. 177 of 26 October 1981, took an approach according to which having reference to an interpretative process, for which the Italian rules must be interpreted in conformity with European law¹⁵.

Finally, the Constitutional Court in the *Granital* case (Judgment No. 170 of 8 June 1984) overcame this reconstruction in terms of the “hierarchy” of relations between European law and Italian law. The decision introduced a reconstruction of these relations in terms of the coordination of competences: any Italian court has the power not to apply Italian legislation conflicting with Community law, without having to ask the Constitutional Court to intervene.

Art. 23, TFEU and Decision 95/553/EC are directly applicable. However, the provisions of the Decision 95/553 are also implemented by the Art. 56, [Decree of the President of the Republic No. 18/1967](#) and Art. 28, [Decree of the President of the Republic No. 200/1967](#); according to these provisions, the consular authorities can also provide assistance to non Italian citizens.

Italy applied Decision 96/409/CSFP after its publication in the EU Official Journal. The decision has not as yet been published in the Italian Official Journal.

2.4. National law

The basic rules for consular protection in Italy have been established by the Decree of the President of the Republic (*Decreto Presidente della Repubblica*), No. 18 of 5 January 1967 (“*Ordinamento dell'Amministrazione degli affari esteri*”- Organization of Administration of Foreign Affairs) and by the Decree of the President of the Republic (*Decreto Presidente della Repubblica*), No. 200 of 5 January 1967 (“*Disposizioni sulle funzioni e sui poteri consolari*” – Provisions on Consular Functions and Powers): the former deals with the organization of the Ministry of Foreign Affairs; the latter strictly regards consular protection.

These acts are legislative decrees (primary legislation) adopted by the Government on the basis of two statutes enacted by the Italian Parliament (according to Article 76 of the Constitution, Law No. 891 of 13 July 1965 and Law No. 586 of 25 July 1966 authorized the Government to adopt them)¹⁶.

Art. 38, [Decree of the President of the Republic No. 18/1967](#) affirms the independence of the consular office with reference to the diplomatic service with only limited “interference” between the two bodies: “*The diplomatic mission oversees and coordinates the activities of consular offices set up in the State of accreditation. The*

¹⁴ Gaia G., *op. cit.*, p. 260.

¹⁵ Gaia G., *op. cit.*, p. 260.

¹⁶ On the different questions concerning the adoption of the cited legislative decrees see Fragola M., *Nozioni di diritto diplomatico e consolare. Tecnica prassi esperienza*, Napoli, 2004, p. 108 ff. The aspect of the organization and of the functions of the Italian Consular administration has not been studied in depth in the last decade. For an introductory approach to these themes and for a history of the legislative framework on the matter in Italy see Biscottini G., *Console*, Enc. Dir., Milano, 1961, p. 357 and ff., Biscottini G., *Manuale di diritto consolare*, Padova, 1969, Capotorti F., Conforti B., Ferrari Bravo L., Starace V., *La giurisprudenza italiana di diritto internazionale privato e processuale*, Repertorio 1942-1966, Bari, 1967, Capotorti F., Storace V. et al., *La giurisprudenza italiana di diritto internazionale privato e processuale*, Repertorio 1967-1990, Milano, 1991, Contuzzi F.P., *Trattato teorico-pratico di Diritto consolare e diplomatico*, Torino, 1910, Maresca A., *Convenzione di Vienna sulle relazioni consolari*, Padova, 1984 and Sinagra A., *Agenti consolari e Consolato*, Enc.Giur., Roma, 1988.

action of the Diplomatic mission in relation to Consular officials has a limit in the powers specifically granted to those officials by law. In the case of disagreement between the Diplomatic mission and the Consular office about the competence of the latter, the opinion of the Diplomatic missions prevails. The head of the Diplomatic mission shall in this case notify, in writing, the Head of the Consular mission about its determinations, of which the Head of the Diplomatic mission assumes the responsibility and about which he shall inform the Ministry”¹⁷.

Art. 39 considers the possibility that the diplomatic service exercises consular functions: *“The Diplomatic mission, in the absence of a consular office in loco, also carries the functions of the consular administration. The exercise of these functions is extended to the territory of the State of accreditation, when this territory is not included in the district of the Consular offices. The Consular office’s functions are also exercised temporarily by the Diplomatic Mission on instructions from the Ministry of Foreign Affairs or in the event that the Consular offices are unable to function. In the latter case the Diplomatic Mission shall immediately inform the Ministry”¹⁸.*

These Acts are integrated by specific regulations:

- Law No. 1185 of 21 November 1967 on Travel Documents (*“Norme sui passaporti”* - Arts. 4, 5, 6, 17, 18 and 19),
- Decree of the President of the Republic No. 396 of 3 November 2000 on Civil Status registration (*“Regolamento per la revisione e la semplificazione dell'ordinamento dello stato civile, a norma dell'articolo 2, comma 12, della legge 15 maggio 1997, n. 1278”* – Arts. 10, 15, 16, 17, 19, 20, 21, 22, 24, 26, 53, 63, 65, 79, 83, 97 and 99)
- Legislative Decree No. 30 of 6 February 2007 implementing Directive 2004/38/EC (*“Attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e dei loro familiari di circolare”* – Arts. 20 bis, 21 and 22).

Italy did not adopt Internal Guidelines for Consular and Diplomatic services.

Relevant case law on consular protection does not exist.

With reference to the political debate, a draft Legislative Decree concerning "Organization and Functions of Consular Offices" and directed towards replacing the existing Decree No. 200/67 is in the phase of study. The bill is still in the phase of inter-ministerial cooperation, and has not yet been presented to the Parliament

2.5. Information to citizens on consular protection

The Ministry of Foreign Affairs is competent with regard to official information about consular protection.

The main sources in this matter are: a) the website of the MFA; b) the report presented each year by the MFA about the organization and functions of consular service (for the last edited version see: *Ministero degli affari esteri, Annuario statistico 2009, Capitolo II - Attività e servizi*¹⁹); c) the website of the general Consular office in the capital city in each State where Italy has a Consular Authority²⁰.

¹⁷ Unofficial translation.

¹⁸ Unofficial translation. On all the questions related to the problems of the relationship between the consular offices and the diplomatic service in Italy see, in general, Fragola M., *op.cit.*, p. 109.

¹⁹ In www.esteri.it/MAE/Pubblicazioni/AnnuarioStatistico/Capitolo2_Annuario2009.pdf (last visited: June 2010).

²⁰ See, for example, the website of the General Consulate in Madrid (www.consmadrid.esteri.it/Consolato_Madrid).

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Italian bilateral agreements with third countries include, in some cases, provisions protecting Union citizens working and/or living in these countries (with a procedure in part different from that provided by Art. 8, Vienna Convention on Consular Protection).

In particular, the bilateral agreements signed by Italy since 1995 – namely the Conventions with Ukraine in 2003 (Art. 62), Republic of Moldova in 2000 (Art. 61), Georgia in 2002 (Art. 60), [Great People's Libyan Arab Jamahiriya Socialist](#) in 1998 (Art. 2) and the [Russian Federation](#) in 2001 (Art. 37) – **all contain the following provisions:** *“upon notification to the State of residence, and unless it opposes this, the Consular Office of the sending State may exercise consular functions in the State of residence on behalf of a third Country. In accordance with this Convention Consular officers of the Italian Republic may exercise in the jurisdiction of the State of residence consular functions on behalf of nationals of other EU Member States which do not have Consular offices in the consular jurisdiction of such officials”*.

This provision indicates in the first paragraph that the Consular officers of the sending State (Italy) can exercise consular functions in the State of residence on behalf of a third country and reproduces, therefore, Art. 8 of the Vienna Convention on Consular Relations.

The second paragraph, however, allows Italy to exercise consular functions in a certain State on behalf of Union citizens whose Member States do not have consular offices in that State.

This provision included in above mentioned international Conventions concluded with States outside the EU allows Italy not to fail in its obligations under the EU law framework (Article 23 TFEU, Article 46 of the Charter of Fundamental Rights of the European Union and Decision 95/553/EC).

On this matter, it is also possible to consider Art. 56 (2) of the Decree of the President of the Republic No 18/1967 which states: : *“the Diplomatic mission and the Consular office shall, upon the instructions of the Ministry or on the base of its own initiative in cases of urgency and need, within the limits of the international standards and of local practice, offer assistance to persons who do not have Italian citizenship and other diplomatic or consular protection in that place”*²¹.

Consular protection is, in principle, reserved for Italian nationals. However, it can be granted to other EU citizens on the grounds of Article 23 TFEU.

Consular protection is not normally extended to family members, when they are not EU citizens.

Italy has not opened negotiations with third countries to include provisions protecting Union citizens working and/or living in third countries.

3.2. Statistical data on consular practice

Italy offers extensive consular services to its citizens. Furthermore, Italy has provided assistance to Union citizens.

²¹ Unofficial translation.

Statistical data:**2008²²:**

Emergency situations: 36.484

Issues of passports: 298.009

Issues of identity documents: 32.565

Travel documents: 15.713

Civil status acts: 268.953

Citizenship acts: 102.418

Navigation acts: 21.156

2007²³:

Emergency situations (accident, death, illness) - in the “emergency situations” only the kinds of interventions coordinated by the Crisis Unit are considered for 2007²⁴: 721

Issues of passports: 432.217

Civil status acts: 248.578²⁵

2006²⁶:

Emergency situations (accident, death, illness) - in the “emergency situations” only the kinds of interventions coordinated by the Crisis Unit are considered for 2006²⁷: 731

Issues of passports: 406.441

Civil status acts: 224.107²⁸

No data are available on the number of Italian assisted by other EU Member States in third countries.

4. Consular protection in detail

Diplomatic and consular assistance and protection is offered by the Italian State by 126 embassies, 105 consular offices and more than 530 honorary consuls²⁹. The Crisis Unit intervenes in events involving emergency situations for Italian citizens.

²² Ministero degli affari esteri, *Annuario statistico 2009*, Capitolo II – Attività e servizi, www.esteri.it/MAE/Pubblicazioni/AnnuarioStatistico/Capitolo2_Annuario2009.pdf (last visited: June 2010).

²³ Ministero degli affari esteri, *Annuario statistico 2008*, Capitolo II – Attività e servizi, www.esteri.it/MAE/doc/capitolo2_2008.pdf (last visited: June 2010).

²⁴ See *Annuario statistico 2008*, Capitolo II – Attività e servizi, *op.cit.* in fact there are not data available for the interventions in general coordinated by the DGIT (*Direzione Generale Italiani all'Estero*).

²⁵ There are no data available in the “Annuario statistico” published in 2008 for: “issues of identity documents”, “travel documents”, “citizenship acts” and “navigation acts”.

²⁶ Ministero degli affari esteri, *Annuario statistico 2007*, Capitolo II – Attività e servizi, www.esteri.it/MAE/doc/capitolo2.pdf (last visited: June 2010).

²⁷ In *Annuario statistico 2007*, Capitolo II – Attività e servizi, *op.cit.* in fact there are not data available for the interventions in general coordinated by the DGIT (*Direzione Generale Italiani all'Estero*).

²⁸ There are no data available in the “Annuario statistico” published in 2008 for: “issues of identity documents”, “travel documents”, “citizenship acts” and “navigation acts”.

²⁹ See: *Annuario statistico 2010*

(http://www.esteri.it/MAE/Pubblicazioni/AnnuarioStatistico/2010_capitolo_primo.pdf).

The list of Italian missions abroad is available on line at the following address:

<http://www.esteri.it/MAE/IT/Ministero/Rappresentanze/>

The Crisis unit submits plans for interventions deemed necessary to the Minister for Foreign Affairs, supplying an initial analysis and assessment of the crisis under way, emergency plans and incoming information. Illustrative charts and maps are continuously prepared and updated by a graphics team. When possible, the Crisis Unit acts directly with the means at its disposal: performing diagnoses by means of a mobile tele-medical unit, arranging for the repatriation of persons in danger of death from illness, and coordinating diplomatic-consular missions at the initial stages of an emergency. Some situations are particularly complex and in these cases the Crisis Unit avails itself of the aid of other Ministries equipped with the appropriate means and qualified professionals. For example, the Crisis Unit collaborates with the armed forces in cases of evacuation, with the Civil Defence Department in cases of natural catastrophe, the Ministry of Health and the Air Force in assisting and repatriating Italian nationals in situations of compromised security or isolation or with life-threatening health conditions³⁰.

In Italy the legal basis for the consular services is represented by the indicated Treaties³¹, by the Decree of the President of the Republic No. 18/1967, by the Decree of the President of the Republic No. 200/1967 and by administrative circulars³².

Art. 45 of Decree of the President of the Republic No 18/1967 states that Consular offices, within the sphere of international law mainly carry out the following functions: (a) protect national interests and citizens and their interests; (b) ensure the fulfillment of the necessary requirements for Italian citizens who reside abroad to exercise their right of vote; (c) protect the Italian workers, particularly with regard to their living and working conditions and to social security; (d) promote educational, welfare and social initiatives for the Italian community as well as promote, assist, coordinate and (in the cases provided by the law) supervise the activities of its Associations, Chambers of Commerce and the Italian bodies; (e) stimulate economic activities relevant for Italy in the most suitable ways, ensuring, in particular, the development of trade; (f) develop cultural relations.

The cited bilateral Treaties reproduce the main part of these provisions.

A Ministry of Foreign Affairs Act (*Ministero degli Affari Esteri, Direzione Generale dell'Emigrazione e degli Affari Sociali, Uff. VIII, Circolare 8.6.1993, n. 9*) **has underlined the conditions for the extension of consular protection to the EU nationals** and has limited it to the: a) assistance in case of death, serious injury or illness, arrest or detention; b) assistance to victims of violent crimes; c) the return of nationals in difficulty.

In 2009, there were 25 ETDs issued by the Italian diplomatic-consular network to non-Italian citizens. There is only one case of assistance to an European Union (not Italian) citizen, detained in South America.

Art. 56 of Decree of the President of the Republic No. 18/1967 and Art. 28 of Decree of the President of the Republic No. 200/1967 allow assistance also to be given to non Italian citizens (for example, recognized refugees or stateless persons).

Art. 42 of Decree of the President of the Republic No.18/1967, according to the Vienna Convention on Consular Relations (and relative Protocols), provides for two kinds of Consular officers, a first category concerning career officials working for the Ministry

³⁰ http://www.esteri.it/MAE/EN/Ministero/Servizi/Imprese/Unita_Crisi/Interventi_Crisi/

³¹ See Section 2.1.

³² All the data in section 4 are derived from the website of the Italian Minister for Foreign Affairs or from the interview with Cons. Marilina Armellini. The information about the relevant laws or decrees, the Italian and European case law and the Italian legal literature are derived from personal research by the author of this Report.

of Foreign Affairs, a second category for officials with the functions of Honorary Consuls³³.

The reference standard in this matter is contained in Art. 47, Decree of the President of the Republic No. 18/1967. The regulations found in this decree vary sometimes substantially from case to case, so it is not possible to say *a priori* exactly what functions each Honorary Consul can exercise: in any case, they cannot be, greater than or different from the functions listed in Art. 45 of Presidential Decree No. 18/1967 (they are, however, often less).

In order to strengthen consular cooperation between EU Member States, Italy has often participated in initiatives for the implementation of the consular Lead State concept.

The Italian Crisis Unit has constantly stressed that, in the event of a major consular crisis, coordination among partners is fundamental to improve rescue missions and consular assistance. In this regard, Italy noted the importance of the exchange of information during meetings, teleconferences or by web-databases. In each occasion, however, Italy affirms that the Lead State concept cannot prejudice the primary responsibility of Member States for protection of their citizens.

The member States should be able to monitor the situation of their own citizens on the ground, to share “intelligence” and make assessments of the situation and to send reinforcements and additional resources.

Nonetheless, Italy believes that any form of cooperation or coordination among Member States, given the specific situations, could help to strengthen first-aid interventions.

Recently, Italy participated as Lead State in the European Union's Monitoring Mission in Georgia in accordance with the Law of No. 183 of 20 November 2008 according to Council Joint Action 2008/759/CFSP of 25 September 2008. In particular, Italy sent 40 observers including 36 soldiers and 4 civilians, in addition to 9 military land vehicles and telecommunications equipment.

The occasion gave the Crisis Unit the opportunity to optimize available resources, in order to promote crisis management based on common initiatives, advanced technologies, exchanges of relevant data, know-out and emergency plans. There is a long list of cooperation among EU countries in emergency situation (for example, Sharm el-Sheikh in 2005, Mumbai in 2008, Haiti and Chile in 2010); but, perhaps, the Georgian event – with the Lebanon case since 2006 – has been the most important Lead State experience for the Italian Ministry of Foreign Affairs.

Italy utilises co-location solutions for consular offices only in a few places. Italy prefers ad-hoc agreements with partners in critical areas, in particular, in countries where there is no Italian Embassy or Consulate.

4.1. Right to consular (and diplomatic) protection

Consular protection is granted as a legal right.

The practice is not definitively oriented in this sense, but it can be derived, on one hand, from the legal literature that has dealt with the topic and, on the other, by an examination of the case law.

In legal literature, the unique scientific analysis of this point has been carried out by Zampaglione (Roma, 1992)³⁴.

³³ Fragola M., *Nozioni di diritto diplomatico e consolare. Tecnica prassi esperienza*, op.cit., p. 9 and 10.

³⁴ Zampaglione G., *Diritto e pratica consolare*, Roma, 1992, p. 435 and 436. This scholar approaches the question of the remedies against acts concerning consular protection, insisting on the possibility of a

The Decree of the President of the Republic No. 18/1967 and the Decree of the President of the Republic No. 200/1967 do not contain any rule for the nature (*right, legitimate interest or issues of policy matters*) of consular protection (or for consular assistance)³⁵.

If the “situation” is qualified as a *right*, the competence is of the *ordinary* courts; while, if this legal situation is qualified as a *legitimate interest*, the jurisdiction is attributed to the *Administrative Courts*. The distinction between *rights* and *legitimate interests* is also prospected by the Italian Constitution (Arts. 24 and 113)³⁶. Another aspect can be connected to the fact that, for the *legitimate interests*, it is not possible, in some cases, to have a full refund, also after the important decision by the Italian Supreme Tribunal (*Corte di Cassazione*) in 1999³⁷.

The examination of the main case law of which there is not much in this matter confirms that Italy is oriented toward defining the interest to consular protection as a *right*.

The majority of the decisions comes, in fact, in Italy **from the ordinary** (and not from the *administrative*) courts³⁸.

We should remember then that, according to Art. 72, Decree of the President of the Republic No 200/1967, an appeal against Consular Authority acts can be made and that the decision on the appeal is communicated to the concerned persons, whether resident or domiciled abroad, via the consular office.

4.2. Assistance in cases of death - Identifying and repatriating remains

The Consular office contacted by a relative or by another person will forward a request to the **competent Italian Municipality** to get the “*nulla osta all'introduzione della salma*” (i.e., the authorization to return the body to Italy).

refund by way of damages suffered by the citizen due to a consular office's act and then gives the idea of a reconstruction of the interest of the citizen in consular protection in term of a *right* (according to a later explanation in this Report, until the 1999 decision of the *Corte di Cassazione*, a refund as damages in the form of extra – contractual liability was admitted only in the case of *rights*).

³⁵ Among the main contributions of the Italian legal literature on the topic of *legitimate interest* see: Miele G., *Potere, diritto soggettivo e interesse*, Riv. Dir. Com., 1944, I, p. 114 and ff., Nigro M., *Ma che cos'è questo interesse legittimo? Interrogativi vecchi e nuovi spunti di riflessione*, Foro It., 1987, V, p. 469 and ff. and Romano S., *Poteri, potestà*, in Romano S., *Frammenti di un dizionario giuridico*, Milano, 1947. For the European Union's perspective about the distinction between *rights* and *legitimate interests* see Caranta R., *Judicial Protection against Member States: A New Jus Commune Takes Shape*, Comm. Market Law Rev., 1995, p. 703 and ff., Chiti M.P., *Diritto amministrativo europeo*, Milano, 2008, Plaza C., Lozano B., *The Europeanization of National Procedural Rules in the Field of Environmental Protection*, European Public Law, 2009, 15, 3, p. 319 and ff., Prechal S., *Remedies after Marshall*, Comm. Market Law Rev., 1990, p. 456 and ff. and Ruffert M., *Rights and Remedies in European Community Law: A Comparative View*, Comm. Market Law Rev., 1997, 34, p. 307 and ff.

³⁶ On the general theoretical problems concerning the distinction between the two indicated categories and, in particular, the implied questions of jurisdiction see Casetta E., *Manuale di diritto amministrativo*, Milano, 2009, Cassese S. (ed.), *Istituzioni di diritto amministrativo*, Milano, 2009 and Sorace D., *Diritto delle amministrazioni pubbliche*, Bologna, 2007.

³⁷ Cass.Civ., 22.7.1999, n. 500, in Giust.Civ., 1999, I, p. 2261. The European law has intervened in the described picture, requiring a full grant for the interests protected by EU law, notwithstanding their nature (as a *right* or as a *legitimate interest*) since the first relevant decision on the matter (*Francovich* 19.11.1991, in C-6/90 and C-9/90). On the pertinent problems for European law we cite again Chiti M.P., *Diritto amministrativo europeo*, op.cit.

³⁸ The indicated data are derived from search in the database in <http://dejure.giuffre.it> and with reference to the Decree of the President of the Republic No. 200/1967. The only judgment of an Administrative Court present in that database is T.A.R. Lazio, Sez. I, 7.2.1991, No. 116. From the afore said search, in particular, 28 decisions emerged.

Then, the contacted Consular representation will deliver the *mortuary passport*.

After this, the funeral enterprise (generally chosen by the family members) can proceed to complete the required formalities for the transfer of the mortal remains to Italy.

The costs are borne by the families themselves. Sometimes, the Regions or other local Authorities provide for refunds or for contributions. Total or partial refund of funeral expenses is provided by the competent Diplomatic or Consular office for compatriots living abroad in a state of documented indigence, when the relative family also lives abroad and is in an analogous economic state and has paid *in loco* the indicated expenses³⁹.

4.3. Assistance in cases of serious accident or serious illness

The Diplomatic-Consular representations **make sure that their citizens receive locally adequate medical treatments**, that the family is informed and that it is given assistance in case of need for any transfer to Italy.

The rules governing the National Health Service also concern Italian workers abroad. In addition to employees (and to their families), certain categories of citizens abroad (as students, ministers of religion, civil servants and military personnel serving abroad) are entitled to receive health care. It is in full and provided directly from the foreign local Health Authority (the assistance also covers tourists in urgent cares) in the European Union countries and in the States with pertinent bilateral Conventions with Italy. The assisted persons must obtain the relevant certificate issued by the foreign local Health Authority. In countries with no such Conventions, citizens (temporarily abroad on business or to study) are entitled to the **refund of the medical expenses** in accordance with the procedure laid down in the Decree of the President of the Republic No. 618 of 31 July 1980. In general, interventions by the Ministry of Foreign Affairs (for the return of Italians abroad in situations of great difficulty) in collaboration with the local competent authorities (Prefectures, police, municipalities, local health authorities, social services) relate to the following cases of serious accident or serious illness: a) children in a state of abandonment; b) migrants in need to return stably to Italy for economic or health reasons; c) patients not able to be locally treated for lack of proper facilities; d) mentally ill (the procedure in this case is very complex, as it requires the presence of one or more qualified escorts, as well as finding specialized facilities); e) Italian citizens after being detained or expelled; f) elderly persons, living alone and for which admission into retirement homes in Italy is sought; g) tourists and other citizens living abroad in a state of temporary need or with health problems and not able to be economically assisted by their respective families. **The returns paid for with public funds are limited to cases of documented indigence (verified by the diplomatic-consular network)**⁴⁰

4.4. Assistance in cases of arrest or detention

When an Italian citizen is arrested in a foreign country, the Consulate **can**:

- visit the detainee, if it was specifically requested;
- indicate an attorney;
- look after contacts with family members in Italy;

³⁹ www.esteri.it/MAE/IT/Italiani_nel_Mondo/PrincipaliAttivita/Servizi_Rete_Consolare/

⁴⁰ www.esteri.it/MAE/IT/Italiani_nel_Mondo/PrincipaliAttivita/Servizi_Rete_Consolare/. The consular functions described in the text of the present Section has a legal base (for that which concerns the aspect of the repatriation) in Art. 24, Decree of the President of the Republic No. 200/1967.

- make provision to ensure the prisoner's health care and basic comfort, when required and permitted by local regulations;
- act for the transfer of the prisoner to Italy, where the Italian citizen is detained in countries which have signed the Strasbourg Convention on the Transfer of Prisoners of 21.3.1983 or with which bilateral Treaties are in force;
- intervene in specific cases to support requests for a pardon, on humanitarian grounds.

The Consulate **cannot**:

- intervene before the courts on behalf of Italian citizens;
- pay the legal expenses of the prisoner⁴¹.

4.5. Assistance to victims of violent crime

In general, what has been observed in [Section 4.3](#) regarding serious accidents or serious illness can be considered similar for this Section.

Italian diplomatic or consular missions provide information about available medical assistance and legal advice.

4.6. Relief and repatriation of distressed citizens

Italy has always supported the development of general cooperation between the EU countries in international crises' management with specific reference to European citizens. Italy continues to promote greater sharing of resources and available information, the use of Crisis Units and the systems of national civil protection, the improvement of the decision-making capacity through rapid mechanisms for consultation, for coordination and in order not to duplicate operations in the same emergency.

Consultation and exchange of information between the European Member States for coordinating interventions at a European level are carried out through teleconferencing links between the Crisis Units of the interested countries and the State responsible in that period for the European Union's Presidency, which from time to time shall inform the other States not participating in the meetings. On several occasions, Italy has taken an active part, urging European coordination in ongoing crises (such as in Madagascar and in Thailand in December 2008)

4.6.1. Natural disasters

Upon the occurrence of a natural disaster, the **Crisis Unit verifies, through the interested diplomatic-consular representation, the possible involvement of Italian citizens** and, in this case, coordinates activities in collaboration with the Italian and the interested foreign authorities in locating and evacuating survivors, and also in the identification of victims and in the repatriation of their remains. When necessary, the Crisis Unit can arrange for the dispatch of appropriate means of assistance (as after the *tsunami* which occurred in South-East Asia in December 2004). The relationships and contacts with the families of the national involved are constant, up to date and directly maintained by the Crisis Unit's staff.

An interesting example is provided by the case of the **Haiti earthquake**.

⁴¹

http://www.esteri.it/MAE/IT/Italiani_nel_Mondo/ServiziConsolari/AssistenzaCittadiniEstero/Assistenza_Detenuti.htm

Almost immediately after this event, the Italian Crisis Unit was contacted by more than a thousand people seeking information about its real extent and the possible involvement of Italian citizens. More than two hundred reports appeared relating to persons effectively located in the most affected area.

It was clear that problems in communications made it necessary to work on the ground. Immediately, the Ministry of Foreign Affairs decided to dispatch an Italian team to Haiti – not only the Crisis Unit’s staff, but also personnel from the Ministry of Defence, the Department of Civil Protection, the International Red Cross, firemen, customs officers. etc. Finally, Italy created a real Crisis Point directly in the Italian Honorary Consulate in Port-au-Prince.

In order to manage the evacuation of dozens of Italian and EU citizens, the Crisis Unit took part in daily teleconferences with EU Partners from Rome and participated in meetings in Brussels and, over all, tried to coordinate actions directly in Haiti.

The Crisis Unit arranged for the evacuation of many people back to Italy and Europe; several other people moved to neighbour countries, such as the United States, and the Dominican Republic. All these actions were possible thanks to concrete cooperation with EU partners.

In particular, the Crisis Unit can testify to the great importance of the coordination realized by the EU Council (Spanish Presidency). Significant assistance was given also by the Belgian and French Governments (for example, in rescue missions and in providing first-aid).

4.6.2. Terrorist acts

The work developed by the Crisis Unit in the arrangement of intervention strategies, both for the prevention and the care of the Italian citizens involved in terrorist acts, is based on the analysis of the intelligence reports of the diplomatic-consular network and, in particular, on “open sources” analysis. The **relationship with the local authorities** allows the best actions to be taken in order to protect any nationals involved (for example, during the attacks in Sharm el-Sheik in 2005 or the attack in Mumbai in November 2007).

In event of abductions, the Italian diplomatic-consular network follows the case, if necessary in consultation with other interested countries (most recently, the hijacking of the Italian ship “Buccaneer” off the Somali coast comes to mind)

4.6.3. Pandemics

The Crisis Unit cooperates with the Ministry of Health and is also the contact point for Italian citizens abroad for the strategies realized by the Italian Government to protect the citizens against the risks of pandemics (for example, avian flu, SARS and, most recently, AH1N1 flu). Health emergency repatriations, for example, for viral illnesses or for the serious injury of Italian citizens, are carried out when and where it is possible in collaboration with the *Aeronautica Militare Italiana* (the Italian Air Force), or with specialized international structures. The Crisis Unit also uses the most updated telemedicine instruments with the possibility of remote diagnosis via a briefcase portable video, for use in the absence of any other possibility. The diplomatic-consular network provides assistance to the Italian citizens involved, in coordination with the local authorities to ensure equality of treatment and adequacy of the medical care provided.

4.6.4. Military conflicts

The Crisis Unit carefully monitors the political crises periodically affecting the various areas in the world. At the emergence of When a situation of particular instability situation emerges with incidents and violence able to jeopardize the safety of Italian citizens and in cases of genuine military conflicts, **the Crisis Unit proceeds to the evacuate the persons involved** (for example, during the Lebanon conflict in July-August 2008 and the Georgian conflict in August 2008). In other cases, the diplomatic-consular network of other European countries directly assists Italian citizens (for example, in the crisis in Chad in February 2008 or in the crisis in Ivory Coast in 2008).

4.6.5. Financial advances

The return of European citizens to their origin countries only occurs in cases of extreme necessity. **There is not an established procedure for the recovery of the funds used to provide assistance to citizens of other European countries.** The guidelines approved about on the concept of the Lead State for the evacuation of EU citizens in countries with no more than two EU Embassies provides the possibility that for the evacuating State to ask for a refund. In the concrete experience practice, this possibility has not yet been verified.

4.7. Consular fees

The costs of consular services are determined in the “consular tariff” in accordance with Art. 56, Decree of the President of the Republic No. 200/1967.

The same consular fees are applied to Italian and cities of other EU countries.

4.8. Reimbursement of the assisting State

Reimbursement of the assisting State is provided in the case of expense with a promise of refund under Art. 23, of Decree of the President of the Republic No. 200/1967, according to which the applicant must sign a promise to refund; the consular authorities send a copy of the obligation assumed in that way to the Ministry of Foreign Affairs.

4.9. Case studies, in particular problematic practices

As mentioned⁴², there was only one case in 2009 of consular assistance to a citizen of the Union, not Italian, detained in South America. The Italian Consulate arranged to visit the prisoner in jail and liaise with the national's State and – through this – with the family.

5. Emergency travel document (ETD)

All Italian diplomatic missions and general consulates are equipped with ETDs (valid for five days). With an internal act (*Appunto 25.11.2003 n. 303/24686*), the Italian Ministry of Foreign Affairs has given instructions to send these documents to the Embassy for further distribution to consulates⁴³.

Honorary consuls are not deemed competent to issue travel documents (and, in general, any documentation, but, these consuls can provide some of the services

⁴² See [Section 4](#).

⁴³ See also the internal act *DGIT – Ufficio III Messaggio 29 – 1 – 2004, n. 303/43727* (aAct directed towards outline the conditions for ETDs for the Diplomatic and the Consular Representations).

mentioned in Decision 95/553/EC, such as visit those nationals in prison or in hospital, put the interested party in contact with lawyers, interpreters or translators)

6. Relevant diplomatic protection

In Italy, the right to consular (and diplomatic) protection exists through the pertinent internal domestic and international law. Consular (and diplomatic) protection is provided for Italian and EU-nationals. In general, consular (and diplomatic) protection is not extended to family members who are not nationals of a Member State

7. Exercise of consular functions for expats

The Ministry of Foreign Affairs estimated 3.702.997 Italian citizens resided abroad in 2006, 3.876.967 in 2007 and 4.106.640 in 2008⁴⁴.

The Italian Government (also through its consular network) provides these Italian citizens with some administrative and financial services.

They mainly concern: the *Aire* (*Anagrafe degli italiani residenti all'estero*), a register in which the names and the data about Italians residing abroad are officially⁴⁵; the right of vote, for which the consular offices ensure that the documents necessary for the exercise of this right are transmitted to Italian citizens⁴⁶; assistance in emergency situations and the delivery of certain documents (issues of passports and of identity documents, travel documents, civil status certificates, citizenship acts and navigation acts)⁴⁷.

The Italian Government assists, furthermore, Italians residing abroad through financial contributions to (also private) legal persons or associations representing or protecting those citizens: for example, in 2008, the Government has spent 1.845.417 Euros on these contributions⁴⁸.

8. Summary

Italy is a party to the most important international Treaties on consular relations and has concluded some bilateral Treaties and also maintains informal arrangements. Further co-operation is based on a common cultural background but also diplomatic and consular networks.

Assistance to EU citizens is provided in accordance with Article 23 TFEU. So far, some but not extensive practice exists. For evacuations in international conflicts, ad hoc co-operation between EU member States has proven to be very helpful.

The legal framework has been extended in some cases by bilateral arrangements to cover the delegation of consular or diplomatic protection under Article 23 TFEU.

⁴⁴ Ministero degli affari esteri, *Annuario statistico 2009, Capitolo II – Attività e servizi*, www.esteri.it/MAE/Pubblicazioni/AnnuarioStatistico/Capitolo2_Annuario2009.pdf (last visited: June 2010).

⁴⁵ Ministero degli affari esteri, *Annuario statistico 2009, Capitolo II – Attività e servizi*, www.esteri.it/MAE/Pubblicazioni/AnnuarioStatistico/Capitolo2_Annuario2009.pdf (last visited: June 2010).

⁴⁶ www.interno.it/mininterno/export/sites/default/it/temi/elezioni/sottotema006.html.

⁴⁷ These acts are listed in:

www.esteri.it/MAE/Pubblicazioni/AnnuarioStatistico/Capitolo2_Annuario2009.pdf

⁴⁸ www.esteri.it/MAE/Pubblicazioni/AnnuarioStatistico/Capitolo2_Annuario2009.pdf

9. List of important documents

International treaties and related national instruments

1.

Title: Legge 9.8.1967, n. 804: Ratifica ed esecuzione delle Convenzioni sulle relazioni diplomatiche e sulle relazioni consolari, e dei Protocolli connessi, adottate a Vienna, rispettivamente il 18 aprile 1961 e il 24 aprile 1963

Publication reference: Gazzetta Uff. 19/09/1967, n. 235, suppl.ord.

English title: Law 9.8.1976, No. 804, Ratification and implementation of the Vienna Convention on Diplomatic Relations, Vienna, 18 April 1961 and Vienna Convention on Consular Relations, Vienna, 24 April 1963 and relative protocols

2.

Title: R.D. 1.7.1937, n. 1379: Approvazione dell'accordo internazionale concernente il trasporto delle salme, stipulato in Berlino il 10 febbraio 1937-XV

Publication reference: Gazzetta Uff. 17/09/1937, n.190

English title: International Agreement on the Transfer of cCorpses, Berlin, 10 February 1937

3.

Title: Convenzione consolare tra la Repubblica italiana e l'Ucraina – Legge 15/12/2005, n. 277 - Ratifica ed esecuzione della Convenzione consolare tra la Repubblica italiana e l'Ucraina, fatta a Kiev il 23 dicembre 2003

Publication reference: Gazzetta Uff. 04/01/2006, n. 3

English title: Consular Convention between the Italian Republic and Ukraine - Ratification and implementation of the Consular Convention between the Republic of Italy and Ukraine, signed in Kiev on 23 December 2003

4.

Title: Convenzione consolare tra la Repubblica italiana e la Repubblica di Moldova - Legge 27/07/2004, n. 212 - Ratifica ed esecuzione della Convenzione consolare tra la Repubblica italiana e la Repubblica di Moldova, fatta a Roma il 23 febbraio 2000

Publication reference: Gazzetta Uff. 17/08/2004, n.192

English title: Consular Convention between the Italian Republic and the Republic of Moldova - Ratification and Implementation of the Consular Convention between the Italian Republic and the Republic of Moldova, signed in Rome on 23 February 2000

5.

Title: Convenzione consolare tra la Repubblica italiana e la Georgia - Legge 19/07/2004, n. 201 - Ratifica ed esecuzione della Convenzione consolare tra la Repubblica italiana e la Georgia, fatta a Tbilisi il 17 luglio 2002

Publication reference: Gazzetta Uff. 10/08/2004, n.186

English title: Consular Convention between the Italian Republic and Georgia - Ratification and implementation of the Consular Convention between the Italian Republic and Georgia, signed in Tbilisi on 17 July 2002

6.

Title: Convenzione consolare tra la Repubblica italiana e la Grande Giamahiria araba libica popolare socialista - Legge 26/02/2004, n. 65 - Ratifica ed esecuzione della Convenzione consolare tra la Repubblica italiana e la Grande Giamahiria araba libica popolare socialista, fatta a Roma il 4 luglio

Publication reference: Gazzetta Uff. 15/03/2004, n.62

English title: Consular Convention between the Italian Republic and the Great Libyan Arab Jamahiriya Socialist People's Republic - Ratification and implementation of the Consular Convention between the Italian Republic and the Great Libyan Arab Jamahiriya Socialist People's Republic, done at Rome on 4 July 1998

7.

Title: Convenzione consolare tra la Repubblica italiana e la Federazione russa - Legge 19/08/2003, n. 243 - Ratifica ed esecuzione della Convenzione consolare tra la Repubblica italiana e la Federazione russa, fatta a Roma il 15 gennaio 2001

Publication reference: Gazzetta Uff. 02/09/2003, n.203

English title: Consular Convention between the Italian Republic and the Russian Federation - Ratification and Implementation of the Consular Convention between the Italian Republic and the Russian Federation, signed in Rome on 15 January 2001

8.

Title: Convenzione consolare tra la Repubblica italiana e la Repubblica di Mauritius - Legge 28/08/1997, n. 310 - Ratifica ed esecuzione della convenzione consolare tra la Repubblica italiana e la Repubblica di Mauritius, fatta a Port Louis il 28 gennaio 1993, con scambio di lettere interpretativo dell'art. 17, effettuato nelle date 1° dicembre 1995 e 10 gennaio 1996

Publication reference: Gazzetta Uff. 18/09/1997, n.187

English title: Consular Convention between the Italian Republic and the Republic of Mauritius - Ratification and Implementation of the Consular Convention between the Italian Republic and the Republic of Mauritius, signed in Port Louis on 28 January 1993, with exchange of letters of interpretation concerning Art. 17, in date 1 December 1995 and 10 January 1996

9.

Title: Convenzione consolare tra la Repubblica italiana e il Regno del Marocco - Legge 06/03/1996, n. 143 - Ratifica ed esecuzione della convenzione consolare tra la Repubblica italiana e il Regno del Marocco, fatta a Roma il 18 febbraio 1994

Publication reference: Gazzetta Uff. 21/03/1996, n.52

English title: Consular Convention between the Italian Republic and the Kingdom of Morocco - Ratification and Implementation of the Consular Convention between the Italian Republic and the Kingdom of Morocco, signed in Rome on 18 February 1994

10.

Title: Convenzione consolare tra la Repubblica italiana e la Repubblica popolare di Cina - Legge 23/06/1990, n. 175 - Ratifica ed esecuzione della convenzione consolare tra la Repubblica italiana e la Repubblica popolare di Cina, firmata a Roma il 19 giugno 1986

Publication reference: Gazzetta Uff. 12/07/1990, n.161

English title: Consular Convention between the Italian Republic and the People's Republic of China - Ratification and Implementation of the Consular Convention between the Italian Republic and the People's Republic of China, signed in Rome on 19 June 1986

11.

Title: Convenzione sulle funzioni consolari tra la Repubblica italiana e la Repubblica argentina - Legge 30/12/1989, n. 437 - Ratifica ed esecuzione della convenzione sulle funzioni consolari tra la Repubblica italiana e la Repubblica argentina, firmata a Roma il 9 dicembre 1987

Publication reference: Gazzetta Uff. 22/01/1990, n.17

English title: Consular Convention between the Italian Republic and the Argentine Republic - Ratification and Implementation of the Convention on Consular Functions between the Italian Republic and the Argentine Republic, signed at Rome on 9 December 1987

12.

Title: Convenzione consolare tra Italia e Repubblica democratica tedesca - Legge 14/10/1985, n. 611 - Ratifica ed esecuzione della convenzione consolare tra Italia e Repubblica democratica tedesca, firmata a Berlino il 27 gennaio 1983, con scambio di lettere effettuato a Berlino in pari data

Publication reference: Gazzetta Uff. 07/11/1985, n. 262

English title: Consular Convention between the Italian Republic and the former German Democratic Republic - Ratification and Implementation of the Consular Convention between Italy and the former German Democratic Republic, signed at Berlin on 27 January 1983, with exchange of letters made in Berlin on the same day

13.

Title: Convenzione consolare tra la Repubblica italiana e la Repubblica socialista cecoslovacca - Legge 18/10/1978, n. 681 - Ratifica ed esecuzione della convenzione consolare tra la Repubblica italiana e la Repubblica socialista cecoslovacca, firmata a Praga il 10 ottobre 1975

Publication reference: Gazzetta Uff. 08/11/1978, n. 312

English title: Consular Convention between the Italian Republic and the Czechoslovak Socialist Republic - Ratification and Implementation of the Consular Convention between the Italian Republic and the Czechoslovak Socialist Republic, signed at Prague on 10 October 1975

14.

Title: Convenzione consolare tra la Repubblica italiana e la Repubblica socialista cecoslovacca - Legge 29/11/1973, n. 886 - Ratifica ed esecuzione della convenzione consolare tra la Repubblica italiana e la Repubblica popolare di Bulgaria, conclusa a Roma il 21 febbraio 1968

Publication reference: Gazzetta Uff. 09/01/1974, n.8

English title: Consular Convention between the Italian Republic and the People's Republic of Bulgaria - Ratification and Implementation of the Consular Convention between the Italian Republic and the People's Republic of Bulgaria, signed in Rome on 21 February 1968

15.

Title: Convenzione consolare tra la Repubblica italiana e l'Unione delle repubbliche socialiste sovietiche con protocollo addizionale - Legge 29/11/1973, n. 879 - Ratifica ed esecuzione della convenzione consolare tra la Repubblica italiana e l'Unione delle repubbliche socialiste sovietiche con protocollo addizionale, conclusa a Mosca il 16 maggio 1967

Publication reference: Gazzetta Uff. 07/01/1974, n.6

English title: Consular Convention between the Italian Republic and the Union of Soviet Socialist Republics - Ratification and Implementation of the Consular Convention between the Italian Republic and the Union of Soviet Socialist Republics with the Additional Protocol, signed in Moscow on 16 May 1967

16.

Title: Convenzione consolare tra l'Italia e la Gran Bretagna con gli annessi Protocolli di firma e scambio di Note - Legge 07/03/1957, n. 298 - Ratifica ed esecuzione della Convenzione consolare tra l'Italia e la Gran Bretagna con gli annessi Protocolli di firma e scambio di Note, conclusi in Roma il 1° giugno 1954

Publication reference: Gazzetta Uff. 13/05/1957, n.121

English title: Consular Convention between the Italian Republic and the Great Britain with the annexes and protocols signed exchange of notes - Ratification and Implementation of the Consular Convention between Italy and Great Britain with the annexes and protocols signed exchange of notes, concluded in Rome on 1 June 1954

17.

Title: Trattato di Commercio e di Navigazione tra il Regno d'Italia e la Repubblica di Venezuela - Regio Decreto - 09/10/1862, n. 902

Publication reference: Gazzetta Uff. 09/10/1862, n.237

English title: Treaty of Commerce and Navigation between the Kingdom of Italy and the Republic of Venezuela

National legislation

18.

Title: Decreto Presidente della Repubblica, 5.1.1967, n. 18 - Ordinamento dell'Amministrazione degli affari esteri

Publication reference: Gazzetta Uff., 18/2/1967, n. 44, suppl.or.

English title: Organization of the Administration of Foreign Affairs

19.

Title: Decreto Presidente della Repubblica, 5.1.1967, n. 200 - Disposizioni sulle funzioni e sui poteri consolari

Publication reference: Gazzetta Uff. 19/04/1967, n.98

English title: Provisions on consular functions and powers

20.

Title: Legge 21.11.1967, n. 1185 - Norme sui passaporti

Publication reference: Gazzetta Uff. 18/12/1967, n. 314

English title: Rules on travel documents

21.

Title: Decreto del Presidente della Repubblica 3.11.2000, n. 396 - Regolamento per la revisione e la semplificazione dell'ordinamento dello stato civile, a norma dell'articolo 2, comma 12, della legge 15 maggio 1997, n. 127

Publication reference: Gazzetta Uff. 30/12/2000, n. 303, suppl.or.

English title: Regulations for the review and simplification of civil status, in accordance with Article 2, paragraph 12 of Law No. 127 of 15 May 1997

22.

Title: Decreto Legislativo 6.2.2007, n. 30 - Attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e dei loro familiari di circolare

Publication reference: Gazzetta Uff. 27/03/2007, n. 72

English title: Implementation of Directive 2004/38/EC on the right of movement of Union citizens and their family members

Circulars, internal guidelines

23.

Title: Ministero degli Affari Esteri, Direzione Generale dell'Emigrazione e degli Affari Sociali, Ufficio IX, Circolare 20.7.1968, n. 29

Publication reference:

http://www.esteri.it/MAE/IT/Ministero/NormativaOnline/Normativa_consolare/ServiziConsolari/TutelaConsolare/Detenuti.htm

Short summary: Internal Act of the Ministry for Foreign Affairs concerning the crimes of Italian citizens abroad

24.

Title: Ministero degli Affari Esteri, Direzione Generale dell'Emigrazione e degli Affari Sociali, Ufficio IX, Circolare 4.4.1979, n. 7

Publication reference:

http://www.esteri.it/MAE/normative/Normativa_Consolare/ServiziConsolari/TutelaConsolare/RimpatrioSalme/circ_7_1979.pdf

Short summary: Internal Act of the Ministry for Foreign Affairs concerning the decease of Italian citizens abroad

25.

Title: Ministero degli Affari Esteri, Direzione Generale dell'Emigrazione e degli Affari Sociali, Ufficio IX, Circolare 29.6.1984, n. 5

Publication reference:

http://www.esteri.it/MAE/IT/Ministero/NormativaOnline/Normativa_consolare/ServiziConsolari/TutelaConsolare/Detenuti.htm

Short summary: Internal Act of the Ministry for Foreign Affairs concerning the crimes of Italian citizens abroad

26.

Title: Ministero degli Affari Esteri, Direzione Generale dell'Emigrazione e degli Affari Sociali, Uff. VIII, Circolare 8.6.1993, n. 9

Publication reference: Not published

Short summary: Internal Act of the Ministry for Foreign Affairs concerning the extension of consular protection to EU citizens

27.

Title: Ministero degli Affari Esteri, D.G.I.E.P.M., 20.11.1998, n. 14

Publication reference:

http://www.esteri.it/MAE/normative/Normativa_Consolare/ServiziConsolari/TutelaConsolare/Rimpatri/circ14_1998.pdf

Short summary: Internal Act of the Ministry for Foreign Affairs on consular repatriation

28.

Title: Ministero degli Affari Esteri, D.G.I.E.P.M., 11.6.2001, n. 6

Publication reference:

http://www.esteri.it/MAE/normative/Normativa_Consolare/ServiziConsolari/TutelaConsolare/Prestiti/circ6_2001.pdf

Short summary: Internal Act of the Ministry for Foreign Affairs concerning the assistance to Italian citizens abroad in state of indigence

Websites, reports

29.

Title: Ministero degli affari esteri, Guida per l'utilizzazione dei servizi consolari, Roma, 2007

Publication reference: http://www.esteri.it/MAE/doc/guida_consolare.pdf

English title: Ministry of Foreign Affairs, Guidelines for the use of the consular services

Short summary: Guidelines addressed to the Italian citizens about the main services concerning consular protection

30.

Title: Ministero degli affari esteri, Annuario statistico 2009, Capitolo II – Attività e servizi

Publication reference:

www.esteri.it/MAE/Pubblicazioni/AnnuarioStatistico/Capitolo2_Annuario2009.pdf (last visited: June 2010)

English title: Ministry of Foreign Affairs, Statistic Report 2009, Chapter II – Activity and sServices

Short summary: Report about the main acts adopted by the Ministry of Foreign Affairs in the year 2008 (and for some matters also in previous years)

31.

Title: Ministero degli affari esteri, Annuario statistico 2008, Capitolo II – Attività e servizi

Publication reference: www.esteri.it/MAE/doc/capitolo2_2008.pdf (last visited: June 2010)

English title: Ministry of Foreign Affairs, Statistic report 2008, Chapter II – Activity and Services

Short summary: Report about the main acts adopted by the Ministry of Foreign Affairs in the year 2007 (and for some matters also in previous years)

32.

Title: Ministero degli affari esteri, Annuario statistico 2007, Capitolo II – Attività e servizi

Publication reference: www.esteri.it/MAE/doc/capitolo2.pdf (last visited: June 2010)

English title: Ministry of Foreign Affairs, Statistic report 2007, Chapter II – Activity and Services

Short summary: Report about the main acts adopted by the Ministry of Foreign Affairs in the year 2006 (and for some matters also in previous years)

Administrative decisions

33.

Title: Ministero degli Affari Esteri, DGIEPM – Ufficio IV, Messaggio 23.7. 2001, n. 304/21279

Publication reference:

http://www.esteri.it/MAE/normative/Normativa_Consolare/ServiziConsolari/TutelaConsolare/Rimpatri/msg21279.pdf

Short summary: Act directed towards clarifying the conditions for the urgent health repatriation of Italian citizens by State planes

34.

Title: Ministero degli Affari Esteri, DGIEPM – Ufficio IV, Messaggio 2.8.2001, Protocollo n. 304/22142

Short summary: Act directed towards clarifying the conditions for the urgent health repatriation of Italian citizens by State planes

35.

Title: Ministero degli Affari Esteri, DGIT – Ufficio III, Messaggio, 29.1.2004, n. 303/43727

Publication reference: Not published

Short summary: Act directed to put in evidence for the Diplomatic and the Consular Representations the conditions for releasing the ETDs



Latvia - Latvija (LV)

1. Introduction

This Report contains the legal framework and national practice of Latvia on consular and diplomatic protection as of 30 January 2010.

Most of the information on the day to day operation of consular assistance is available in Latvian through reports of the Ministry of Foreign Affairs.

The basis of the Report is in-depth research using the available databases of legislation in force (*NAIS*) and case law of the courts (*TIS*), website of the Latvian Ministry of Foreign Affairs¹ and other publicly accessible sources. The draft Report was discussed with representatives of the Consular department during an interview.²

1.1. Terminology - National acronyms and definitions

Consular Register – it is a voluntary register for short term travellers. They can either register on-line or submit an application in a Consular Department or an embassy. Consular Register information is used solely in the cases of crisis. If a Latvian passport-holder resides abroad for more than 6 months s/he is obliged to register in the respective Latvian mission and the data is transmitted to the Population Register. The Population Register differs from the Consular Register because it is legally binding. However, even though the registration of residence in the Population Register is obligation by law, Latvian missions have no enforcement mechanisms.

MFA- Latvian Ministry of Foreign Affairs

MFA Annual Reports [year] – Annual Report of the Ministry of Foreign Affairs

Non-citizens – persons who were USSR nationals but who after 1991 did not qualify for Latvian nationality and did neither acquire Russian nor any other nationality. They were issued a non-citizen passport. They are not considered as stateless persons neither by Latvia, nor international organizations. According to case-law of administrative courts the status of non-citizen can be lost only by acquiring citizenship.

OCMA – Office of Citizenship and Migration Affairs

OG – Official Gazette

Saeima – Parliament of Latvia

Satversme – Constitution of Latvia

2. Legal framework

Latvia's legal framework consists of multilateral treaties ratified by Latvia; bilateral treaties; obligations under EU law; national laws and regulations, State policy and practice. There are *ad hoc* arrangements in specific cases when Consular Department

¹ <http://www.am.gov.lv/en/>

² Ms Zanda Grauze, Director of the Consular Department, Mr Uldis Simsons, Deputy Head of Director of the Consular Department. Date of the interview 27 January 2010. All responsibility for omissions and mistakes remains with the author of the report.

approaches other EU Member States for assistance in solving particular case or problem.

There is no political debate ongoing in relation to consular affairs.

2.1. *International law*

The Vienna Convention on Consular Relations has been ratified by Latvia on 28 January 1992 (OG No. 8, 27 February 1992).

Latvia has not signed the Vienna Convention on Consular Relations Optional Protocol on the Compulsory settlement of Disputes.

The Agreement on the Transfer of Corpses has been signed and ratified by Latvia on 5 December 1996. The authority responsible for implementation of the Agreement is Health Inspectorate of Latvia.

A multilateral agreement on co-operation in the consular field has been concluded between the Baltic States. The agreement provides for mutual co-operation in providing consular protection and assistance. There is also the Agreement on Friendship, Trade and Consular Relations between Latvia and the USA which is still in force (20 April 1928). Bilateral agreements on general consular relations have been concluded with Uzbekistan, Russia and Poland. **In general, the policy to conclude agreements was pronounced in the early 1990s. Bilateral agreements are rarely applied and no longer concluded because the provisions do not go beyond the provisions of the Vienna Conventions.**

Latvia does not have informal bilateral agreements on consular assistance or protection. However, there have been *ad hoc* cases when assistance or protection is requested from representatives of other EU Member States. This has happened if a particular situation took place in a country where Latvia does not have a mission. For instance, there have been cases when missions of other Baltic States or Scandinavian States have been approached by the Consular Department. But this is not an exhaustive list of States that have co-operated with Latvia. The experience has in most cases been successful.

2.2. *Transposition of international law into national law*

The Latvian “Law on International Agreements” establishes procedures for the ratification of international agreements. Article 12 of that law provides that the Cabinet of Ministers is responsible for the implementation of international obligations. Article 13 of that law states that in cases **when an international treaty includes provisions which are contrary to Latvian laws, the provisions of the international treaty should be applied.**

The “Law on the Diplomatic and Consular Service” in its Article 1 refers to both Vienna Conventions which are the main documents establishing the status as well as the privileges and immunities of persons and missions of the diplomatic and consular service.

2.3. *Implementation of European law into national law*

Article 23 TFEU and Decision 95/553/EC are directly applicable.

The Council Decision 96/409/CFSP was transposed by adopting relevant Cabinet of Ministers Regulations.

The consular officials follow the European Union guidelines on the implementation of the consular Lead State concept.

2.4. National law

Article 98 of *Satversme* (the Latvian Constitution) *inter alia* provides: “**Everyone having a Latvian passport shall be protected by the State when abroad and has the right to freely return to Latvia.**” Latvian passport holders are considered to be not only citizens but also non-citizens³, stateless persons and refugees who possess special passport issued by Latvia. **Thus, it can be argued that there is a constitutional right to consular protection.**

The “**Law on Diplomatic and Consular Service**”⁴ outlines the general tasks for the diplomatic and consular service. Paragraph 1 of Article 1 refers to the Vienna Conventions of 1961 and 1963 which should serve as the basis for status, privileges and immunities of the diplomatic and consular service.

Article 2 of the Law on Diplomatic and Consular Service includes an enumeration of tasks which *inter alia* provides in indent 1 that the diplomatic and consular service should ensure protection of interests of citizens, non-citizens, stateless persons having a permanent residence in Latvia as well as legal persons registered in Latvia abroad. Indent 5 of the same Article provides that consular functions are performed in accordance with the Consular Statute.

Article 6 of the Law on Diplomatic and Consular Service provides that honorary consuls can be appointed or dismissed, and their subordination can be determined by the Minister for Foreign Affairs. Honorary consuls should act in accordance with the Vienna Convention (1963) and the Consular Statute.

According to **Article 11 of the Consular Statute**, which is primary law in Latvia, consuls are in charge of the registration of persons who have Latvian passports. Consuls should assist them in court cases and administrative cases. They should also assist in citizenship as well as passport issues, and should protect personal, material and other rights and interests of Latvian passport holders. The procedure for financial assistance should be set by the Cabinet of Ministers. **Financial assistance would be provided in limited cases.** However, due to the economic crisis further elaboration has been postponed until 2013.

The same Article, in paragraph 2, provides that **consuls should assist and protect personal, material and other rights and interests of those EU citizens who have no consular representative in a specific area.**

In case a person considers that consular protection was refused without reason, s/he can follow the procedures set in the Law on Administrative Procedure, i.e., submit complaint to the MFA or submit an application in administrative court.

There are regular training sessions organized for consuls in Riga or elsewhere. This practice has existed for more than ten years. During training sessions consuls discuss different cases, changes in legislation as well as other issues related to consular service. In addition there is **an on-line internal manual which consists of relevant legislative acts and their commentary for every-day use by consuls. The manual is not public** because the correspondence between consuls might contain personal data protected by law. MFA also produces internal quarterly circulars which contain report on practice as well as interpretation and explanations how to proceed in specific cases.

Services can be clustered in the following main groups: (i) consular services which are provided on the basis of the Consular Statute (e.g., the Consular Register, travel

³ See Judgment of the Constitutional Court in case No. 2004-15-0106, 7 March 2005, paragraph 17. Available at <http://www.satv.tiesa.gov.lv/upload/2004-15-0106E.rtf>

⁴ Published OG No 155, 10 October 1995, in force since 24 October 1995.

documents, money transfers, assistance in cases of death, accident or illness, arrests and the like), **(ii)** consular assistance provided on the basis of the Consular Statute and other laws (e.g., passports, information on consular issues, the civil acts register, legalization of documents, notary services and the like), **(iii)** consular services on basis of other laws (e.g., organization of elections, protection of ships, visas and residence permits, the registration of citizenship status, data for the Population Register, repatriation and the like).

The support offered by consular services is aimed at coordinating first help. Representatives working in consular services issue return documents, get in contact with relatives who can offer financial support and inform relatives in cases of accidents. They represent rights and interests of a person when dealing with local institutions. **However, consulates will neither intervene in the work of judicial organizations, nor provide legal advice, pay hotel bills, or legal aid or the like. All costs shall be borne by individuals or their relatives and friends. In exceptional cases consular officials get in contact with social assistance institutions and request their financial assistance.**⁵ The consular services are subject to State duties (fees) set by the Cabinet of Ministers (for instance, in cases of travel documents). In case of services of notaries there are two regulations: one establishing procedures, and one setting a price list for services.⁶

Special assistance is provided in case of emergencies (natural disasters, armed conflicts etc). The Ministry is checking the Consular Register, gets in contact with relatives and organizes the evacuation. There have been occasions when evacuation expenses were covered from the State budget.

Support for expats has a very long tradition because consular functions by Latvian embassies were performed also during the occupation period. **Currently this assistance becomes more important because the number of Latvian passport holders residing in other EU Member States and elsewhere is increasing.** Latvian consuls are coordinating the process of registration for Latvian citizenship, they perform acts as notary and civil registrar (cases of birth, death, marriage). Latvian consulates organize elections and referenda in co-operation with the Central Election Commission.

Although not directly related to this subject of the report it can be noted that consuls also transmit judicial and extrajudicial documents or request documents within the framework of judicial co-operation.

2.5. Information to citizens on consular protection

The website of the MFA and different embassies provide information on how to act in different situations (loss of passport, financial assistance, assistance in cases of illness or accident, assistance in case of death of a person abroad).⁷ The Ministry also invites persons to familiarize themselves with summarized information entitled *What should be*

⁵ For instance, there have been cases when persons reside abroad without any income and they do not have relatives in Latvia who could pay for their return. In those cases consuls get in contact with the local government in the territory of which person has registered place of residence and requests for financial assistance. In certain cases local governments have been of help. The same procedure is applied in cases if a person has died abroad and did not have insurance.

⁶ Noteikumi Nr. 283 par notariālo funkciju veikšanu LR diplomātiskajās un konsulārajās pārstāvniecībās, OG No. 63, 23 April 2008. Noteikumi Nr. 1333 par Ārlietu ministrijas sniegto konsulāro maksas pakalpojumu cenrādi, OG No. 187, 27 November 2009.

⁷ See <http://www.mfa.gov.lv/lv/KonsularaInformacija/> and <http://www.mfa.gov.lv/lv/KonsularaInformacija/celotajiem/>, accessed on 11 May 2010.

known when going abroad and recommends to obtain health and life insurance. Short-term travellers are invited to register themselves in the Consular Register.⁸

The network for consular services, assistance and protection consists of Latvian missions, a central service, and missions of other EU MS. Advice about possible assistance can be obtained around the clock by calling an emergency phone number. If necessary the emergency consultant will get in touch with a consul or honorary consul in the respective State and the person will be provided help at any time. Alternatively persons can submit their questions by email or contact the Consular Department during working hours.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

According to [Article 5 of the Law on Diplomatic and Consular Service](#) the MFA can conclude agreements with other States in order to establish diplomatic or consular representations in third countries. The same Article provides that a Latvian diplomatic or consular representative can represent interests of third countries on the basis of a special authorization. Latvia can also authorize officials of another country to represent its interests in a third country. According to the law the decision is made by the Minister for Foreign Affairs and it should be confirmed by the Commission of Foreign Affairs of *Saeima* (the Latvian Parliament).

Apart from the agreement between the three Baltic States there are no agreements which include provisions protecting Union citizens working and living in third countries. Latvia has not informed third countries about the practice of extending protection to Union citizens. However, in cases of evacuations *ad hoc* arrangements have been made. Until now, Latvia has not informed third countries of this practice due to the fact that the cases are rare and emergent.

Latvia has not started negotiations concerning agreements with third countries that include provisions related to protection of Union citizens working and living in third countries.

Latvia has not started negotiations concerning agreements with third countries that include provisions extending consular protection to EU citizens' family members who are not nationals of an EU Member States.

Latvia is using assistance provided within the EU framework on an *ad hoc* basis. Taking into account the limited resources and representation of Latvia abroad the possibilities offered by the EU are seen as major advantage. Latvia itself offered help to EU citizens during the war in Georgia in 2008. In addition Latvia is relying on information and the experiences of others, with the aim of developing good practice and smooth cooperation in day to day consular work, established by COCON.

⁸ See <https://kr.am.gov.lv/main.html&redirect=Lw>, accessed on 11 May 2010.

3.2. Statistical data on consular practice

According to the MFA Annual Report (2007-2008) statistical data are as follows:

Consular service	2005	2006	2007	2008
Cases of illness/death	72	89	61	111
Arrest/detention	187	188	142	117
Money transfers	73	52	45	27
Visas ⁹				136.355
Return documents	1.791	2.302	2.691	3.536
Passports				8.000
Legalization of documents	8.362	8.720	10.216	12.730
Renunciation of citizenship				227
Registration of citizenship				1.233
Voting in elections and referenda		7.490	4.892	

In general EU citizens can approach Latvian missions if there is no mission of their respective EU Member States. Latvian mission will issue an ETD after receiving consent from Ministry of Foreign Affairs of the respective State. The same applies to Latvian passport holders who have approached missions of another EU Member States. The question of assistance to family members and other persons depends on the implementation of EU guidelines of 'Lead-State', the ETD Regulation and the particular circumstances of the case at hand. **The consular assistance will be different in cases of crisis situations (e.g., natural disasters and wars) than in more regular situations (e.g., assistance to family members of Latvian passport holders residing abroad on a long-term basis).**

4. Consular protection in detail

According to the MFA the main task of the consular service is to protect rights and interests of Latvian passport holders. The consular service steps in to assist persons in cases of crisis. Consular services are offered by Latvian embassies, including honorary consuls as well as in co-operation with consular officials of other EU Member States.¹⁰

European rules are directly applicable.

There is no additional transposition of the Vienna Convention except for the reference in the Law on Diplomatic and Consular Service.

⁹ There are statistics available also for period from 2004-2007 but those are not comparable with statistics from 2008 because of the changes brought by the Latvian membership in the Schengen area since 21 December 2007.

¹⁰ MFA Annual Report [2007].

In the beginning of 2010 there were 44 diplomatic and consular representations (35 embassies, 6 permanent representations, 1 general consulate and 2 consulates).¹¹ There are 125 honorary consuls and 11 honorary general consuls.

According to Article 6 of the Law on Diplomatic and Consular Service, honorary consuls are appointed by Minister for Foreign Affairs. Honorary consuls act in accordance with the 1963 Vienna Convention and Consular Statute. However, they are not considered as part of civil service. According to Article 7 of the Consular Statute consular representations led by honorary consuls should be entitled '**honorary consulates**'. **They are financed indirectly, i.e., MFA may allow consulates to keep consular fees charged for services.** Specific functions which honorary consuls are entitled to perform are decided in each specific case by the Minister or State Secretary of the MFA. There are also specific provisions in the Consular Statute concerning the possibilities for honorary consuls to join civil service in case if they are Latvian citizens. The Law on Diplomatic and Consular Service allows making arrangements for opening of joint diplomatic and consular representations in third countries. It also provides that Latvian missions can represent interests of third countries on the basis of special authorization and *vice versa* (Article 5). These decisions should be made by the Minister for Foreign Affairs.

Currently there is an arrangement made with embassy of Estonia in Egypt that both – Latvian and Estonian embassies will work in the same premises. However, consular functions are performed by diplomats of both States.¹²

In general co-operation in consular affairs takes place on *ad hoc* basis. There are no agreements concluded.

The case law found on consular issues has no direct relevance to the subject matter of this report.

There have been cases involving difficulties with the recognition of a person as a citizen¹³; cases involving problems related to the recognition of rulings of foreign courts being not properly legalized in inheritance cases¹⁴ and employment cases in embassies of other States in Latvia¹⁵.

4.1. Right to consular (and diplomatic) protection

According to the provisions of the *Satversme* (the Latvian constitution) and relevant laws it can be concluded that **consular protection is classified more as a right than as an administrative practice**. Moreover, **consular protection is offered not only to Latvian citizens but also to all holders of passports issued by Latvia, i.e., non-**

¹¹ The list of embassies and consulates is available at <http://www.mfa.gov.lv/lv/Ministrija/mission/parstavniecibas/> (accessed on 13 May 2010).

¹² Press release of the MFA "*Latvija un Igaunija vienojas par sadarbību diplomātisko pārstāvniecību telpu nomā Ēģiptes Arābu Republikā*" [Latvia and Estonia agree on co-operation in renting premises for embassies in Egypt], 29 December 2009.

¹³ There are a number of cases when Latvian expats have had misunderstandings in relation to registration as Latvian citizens. The Latvian Citizenship Law provides that those who were deported during or who took refuge after the Soviet occupation in 1940 could by exception register as Latvian citizens by July 1995 without losing the other nationality. Other than that, dual nationality is not accepted. Expats claim that they were not correctly advised by consular officials on how to fill in the application forms. In certain cases this has led to situations that parents are registered as citizens, while their children are refused registration. See, for instance, Case No. A42471607, AA43-0951-09/15, 3 July 2009.

¹⁴ See, for instance, Cases Nos. 2-816/89, 400/90, 44/91, 247/92, 463/93, 573/94, 1763/95, 1877/96, 677/97, 9685/98, 3044/99, 409/00, C2916501, 7302, 4603, 2304 of 13 April 2004.

¹⁵ These cases concern diplomatic immunities from State jurisdiction, including immunity from civil proceedings. See, for instance, Case No. C27150904, 22 October 2004.

citizens, stateless persons and refugees. In practice, there have been cases when non-citizens were requesting consular protection.¹⁶ **The assistance in crisis situations is extended to family members of Latvian passport holders** (see below for the case of Lebanon). However, apart from that consular services and protection are not extended to family members.

The Consular Register was introduced in 2005. During 2008 the Consular Department worked on an online Consular Register which became functional in 2009. **The aim of the Consular Register is to collect information about persons who have a short-stay abroad.** The registration takes place in Latvian embassies, consulates and the Consular Department, or online by the traveller. This registration ensures the protection of rights and interests of those registered persons, as well as assistance in emergency situations. In 2008, there were 970 persons registered in the register (in 2007 – 174 travellers registered, in 2006 – 138, in 2005 – 48).

Persons are recommended to register and to buy health and life insurance.

4.2. Assistance in cases of death – Identifying and repatriating remains

In case of death of a relative or friend co-travellers are invited to inform local police and Latvian mission immediately. If there are no Latvian missions in vicinity, persons are invited to contact the Consular Department on the emergency phone. If a Latvian mission is informed about the death of a person by local police, the mission informs the national authorities. Further procedures depend on the particular circumstances, i.e., either death is registered by local authorities or by the consular authorities. This will further determine the procedures for the registration of death in accordance with the Law on the Civil Acts Register.¹⁷ Other logistics depend on whether person was insured, whether it is possible to find the next of kin and so on. MFA does not bear expenses for transportation, funeral and related costs. **Consuls will help with formalities** – contacting local institutions, getting a death certificate and the like. **Funeral expenses will not be covered by consular authorities.**

According to the Director of the Consular Department Ms. Zanda Grauze, during 2008 there were 111 cases in which Latvian passport holders died abroad and they did not have insurance. The Consular Department is getting lots of criticism for the inability to help with transportation. Ms. Grauze confirmed that there is a lack of financial resources.

The Department has on a number of occasions recommended obtaining a European Health Insurance Card which is free of charge and can be obtained for three years.¹⁸

Concerning cases of identifying remains consular officials have been involved only rarely. Usually the identification is taking place on a basis of co-operation between police forces (including Europol and Interpol). If assistance is required it is provided in co-operation with local authorities.

¹⁶ For instance, in case of arrest of pirates who hijacked vessel “Arctic Sea”, Latvian non-citizen requested meeting with representatives of Latvian embassy in Russia. They visited him in jail. See national daily newspaper *Neatkarīgā Rīta Avīze*, 4 September 2009.

¹⁷ *Civilstāvokļa aktu likums*, OG No. 52, 1 April 2005, in force since 15 April 2005.

¹⁸ *Ilze Kalniņa, Pirms ceļošanas jāparūpējas par drošību* [One should take care about safety before traveling], Internet news portal Brīva Daugava, http://www.bdaugava.lv/?kat=1&news_id=7555, 12 May 2009.

4.3. Assistance in cases of serious accident or serious illness

Assistance in cases of serious illness is not subject to regulation of any legal act. However, it is considered as a fundamental function according to the Vienna Convention and the Consular Statute.

Missions react on *ad hoc* basis. There is no practice to recommend specific lawyers or clinics. However, each embassy has a list of establishments which can be of help in particular circumstances. The list is made up on the basis of previous experiences. In case of credit organizations, for instance, Western Union is suggested because it is the only player on the market. If solicitors are sought no advice is given because there is free market. At the same time information on potential assistance of different non-profit organizations is provided.

Latvian consular officials are offering assistance of the **Crisis Emergency Medical Center** [*Katasrofu Medicīnas Centrs*] of Latvia. The Center can ensure emergency assistance and transportation in certain cases. **The expenses of services offered have to be covered by relatives or friends.**

4.4. Assistance in cases of arrest or detention

In cases of arrest or detention Latvian consular officials **inform**, with the consent of the individual, the Latvian authorities. There have been a number of cases when persons refuse consular assistance or request that their relatives are not informed. The detainee is **visited** if it is possible (vicinity of consular officials to the place of detention). The visits are planned on an *ad hoc basis*. Legal advice is not provided.

There have been cases when Latvia offered extensive consular assistance, even organizing consular visits to the site of detention. Most recently Russian arrests in the *Arctic Sea* case can be mentioned. Latvian citizen and non-citizen have been detained. Consular officials visited them in detention.

According to Z. Grauze lately there is an increasing number of cases of drug crimes. In most cases those take place in Argentina, Chile, Peru and Costa Rica.¹⁹ In this context there are two initiatives. First, assistance is requested from the embassies of other EU Member States if they have consular representatives (e.g., if the case has happened in a State where Latvia does not have mission – Nepal, Argentina). Second, there are plans to conclude agreements with third States on extradition of Latvian passport holders for serving their sentence in Latvia.

4.5. Assistance to victims of violent crime

In most cases this concerns assistance in cases of human trafficking. The embassies are doing their best to get Latvian passport holders back either by financial assistance of relatives or local governments. They are also contacting Ministry of Welfare or relevant NGOs to ensure that persons are getting necessary psychological assistance.

4.6. Relief and repatriation of distressed citizens

Latvian diplomatic and consular missions provide **advice and assistance**. Mission officials are searching for Latvian passport holders on the basis of information contained in the Consular Register as well as by contacting tourism agencies. Latvian citizens are also recommended to contact Latvian missions. **Evacuations are organized**

¹⁹ *Ibid.*

if required. Costs have to be covered by Latvian citizens, but there might be exceptions which are decided upon by the Cabinet of Ministers.

In 2008 about 68 warnings have been given out to point out potential terrorist acts, conflict situations or infection risks when visiting a particular country or region.²⁰ Recently such warnings have been issued in the context of the situation in Haiti (January 2010), Kirgizstan and its neighbouring countries (March and April 2010).²¹ In case of Kirgizstan 13 persons with Latvian passports were identified, including 6 mountain climbers. None of them needed assistance.²²

In cases of emergency situations there is a phone number which can be reached at any time of the day, including weekends and public holidays. Apart from that individuals can use email.

Latvia is following European Union guidelines on the implementation of the consular Lead State concept. For instance, concerning Kirgizstan the MFA informed that German embassy has taken Lead State role and assists the EU citizens.

4.6.1. Natural disasters

Latvian consular and diplomatic authorities immediately establish **close contacts with citizens** in order to provide support and, if required, organize evacuations. There have been cases in which people are contacted by the Consular Department on the basis of information of the Consular Register or via tourist agencies. In most cases, the persons contacted reported that they do not need assistance²³. MFA had no data about presence of Latvian citizens in Haiti at the time of earthquake.²⁴ There were six Latvian passport holders identified after earthquake in Chile. Only one of them asked for consular assistance. The Latvian honorary consul provided assistance in organizing flight from Chile.²⁵

During flood in Madeira 10 Latvian passport holders – tourists and residents – were identified. All of them stated that they did not need assistance.²⁶ Travellers were also invited to contact the Embassy of Latvia and provide information about their intended destination before leaving Latvia.

4.6.2. Terrorist acts

In case of a terrorist attack, the Latvian consular and diplomatic authorities **contact local authorities** in order to provide support to Latvian citizens if they are involved. There have not been any particular example as yet.

²⁰ Annual Report of Foreign Ministry 2008.

²¹ List of countries where travel is not recommended is available at <http://www.mfa.gov.lv/lv/vilnius/jaunumi/LatvijasArlietas/LatvijasArlietas-Template/?pg=4526&print=on>, accessed on 13 May 2010.

²² National News Agency LETA, *Kirgizstānā apzināti 13 Latvijas valstspiederīgie* [13 Latvian passport holders identified in Kirgizstan], 8 April 2010.

²³ L.Lūse, *Konsulārais reģistrs – tiem, kas izbrauc no Latvijas* [Consular Register – for those who are leaving Latvia], interview with Head of Consular Assistance Division Ms. Sanda Sīlīte-Galiņa, news portal <http://www.lv.lv/?menu=doc&id=199776>, 29 October 2009.

²⁴ National News Agency LETA, *Foreign minister for now has no news about any Latvian citizens in Haiti*, 13 January 2010.

²⁵ Radio news of 5 March 2010, available via <http://www.monitorings.lv/clients/AM/raport&groupby=keyword> accessed 13 May 2010.

²⁶ News portal www.delfi.lv *Madeirā apzināti 10 tūristi no Latvijas; cietušo nav* [10 tourists from Latvia identified in Madeira; no victims], 22 February 2010.

4.6.3. Pandemics

Latvian missions **contact local authorities** to support citizens. The last example relates to Latin America when the A(H1N1) virus was diagnosed. No assistance was requested.

4.6.4. Military conflicts

Evacuations are organized immediately if necessary and family members are offered assistance irrespective of their nationality.

Lebanon conflict – July/August 2006

One of the reported evacuations in cases of military conflicts was the war between Lebanon and Israel in July 2006. The Consular Department searched for Latvian passport holders located in Lebanon. The honorary consul in Lebanon was also involved. **In terms of the number of persons evacuated, this is considered to be the largest operation in the history of the Latvian consular service.** Altogether 55 persons were identified, out of which 25 citizens and 6 family members asked for help. Two of them were citizens of Lebanon, but 4 were children of a Latvian non-citizen and a citizen of Lebanon, and were not registered as citizens of any country.

The evacuation of 31 persons took place with the assistance of other EU Member States. First those persons were brought to Cyprus or Damascus (Syria). Further, Latvia granted 17.050 LVL (approx. Euro 24.357) to finance the evacuation to Latvia.²⁷ No reimbursement was requested by the government. According to the MFA the successful evacuation was possible because of a close co-operation between EU Member States, especially France and Denmark as well as Cyprus. The efforts of honorary consuls in Lebanon and Cyprus have also been mentioned.

Georgia conflict – August 2008:

During the conflict in Georgia the Consular Register was of great assistance. Latvian consular officials got in contact with Latvian passport holders there – about 50 people. A special flight was organized.

The Latvian embassy also provided assistance to citizens of Lithuania and Estonia. The embassy was grateful to the national airline “*airBaltic*” which was the only airline which continued flying to Tbilisi.²⁸ The Minister for Foreign Affairs has expressed his gratitude to Armenia for the co-operation in the evacuation of Latvian passport holders during the Georgian crisis.²⁹

There was also a special mission organized in co-operation with Georgian border-guards to rescue 7 mountain climbers in Georgia at the beginning of August 2008. However, the mission was not successful due to bombardments and climate changes. It was assumed that 3 of the persons died in a hurricane which took place in Svanetia Mountains in Georgia. The mission returned to Riga via Batumi and Tbilisi by using the services of national airlines.

During other conflicts no nationals of Latvia were involved.

²⁷ See Informative report “On granting means for the Ministry of Finance for program 41.02 *Resources for unexpected cases* during 9 months in 2006”. FMZino_051006.

²⁸ National News Agency BNS, *Latvijas glābēju ekspedīcija pārtrauks meklēt Gruzijā pazudušos alpinistus* [Latvian rescue mission will discontinue searching mountain-climbers missing in Georgia], 9 August 2008.

²⁹ *Ārlietu ministrs Māris Riekstiņš Armēnijas ārlietu ministram apliecina Latvijas gatavību nodot reformu pieredzi* [Minister for Foreign Affairs Māris Riekstiņš confirms to Minister for Foreign Affairs of Armenia readiness of Latvia to share reform experience], Press release of MFA, 19 November 2008.

4.6.5. Financial advances

In general financial assistance is very limited. There is a mechanism how support can be organized with assistance from home – that means from friends and relatives.

On 12 January 2008 amendments to the Consular Statute entered into force. According to those amendments the Cabinet of Ministers had to establish a procedure according to which financial assistance is granted to persons who possess Latvian passports and who are in an emergency situation abroad. The Cabinet was also entrusted to establish a procedure how the borrowed money should be paid back to the State.

The MFA conducted research about the practice in other States and concluded that in most cases funding is coming from the State budget. They proposed that the best system to ensure that money is paid back would be to give a loan by issuing a bill of exchange. The proposal was discussed between ministries. They agreed that additional amendments in legislation are required to introduce the system. This message was conveyed during a meeting of State Secretaries of all ministries. They agreed that further consultations are needed before the relevant Cabinet Regulation is submitted for approval.³⁰ No further developments have been recorded. **It is expected that the system will become effective no earlier than by the end of 2013.**

4.7. Consular fees

Consular fees are set by the Cabinet of Ministers Regulations No. 1333 (OG No. 187, 27 November 2009). **They provide that person can be exempted from paying on basis of human consideration.** The decision should be made by Head of the Consular Department or person entrusted by him/her.

Regulations contain annex with table which includes enumeration of services and respective fees. **There are no indications that fees would be different for EU citizens.** All fees are mentioned in lats (Latvian national currency).

In case if consular officials should assist in getting documents from archives person should pay a fee LVL 10 (Euro 14) per document. The fee is lower for retired persons and persons who were subject to repressions during occupation.

For preparing consular note within 10 days the fee LVL 10 should be paid. If document should be issued within one day the fee to be paid is LVL 20 (28 Euro). The fee for documents is LVL 25 (35 Euro). The fee for performance of functions of notary outside embassy is LVL (28 Euro) per hour. The other fees set are for translation of documents from foreign languages to Latvian and vice versa (LVL 15-30, 21-42 Euro per page). The fee for sending documents is LVL 30 (42 Euro). The fee for preparing documents and submitting them to the Office of Citizenship and Migration Affairs is LVL 30 (42 Euro). The fee for marriage depends whether person wants to have ceremony (LVL 50-100, 71-143 Euro).

4.8. Reimbursement of the assisting State

There is no regulation in Latvia concerning reimbursement. Latvian representatives participate in discussions at the EU level aimed at harmonizing the reimbursement process. Currently the outcome is unclear.

Article 11 of the Agreement on consular co-operation and assistance among Baltic States provides that in cases if Latvian passport holders have received consular

³⁰ See Minutes No. 28 of the meeting of State Secretaries, 17 July 2008, available at <http://www.mk.gov.lv/mk/vssanaksmes/saraksts/protokols/?print&protokols=2008-07-17>

assistance, if appropriate, the Latvian government should compensate the assisting State for services. This is a mutual obligation between the three Baltic States.

4.9. Case studies in particular problematic practices

There are no publicly known cases on problematic practices. In most cases people are disappointed if consular officials cannot provide them financial assistance. The Consular Department has explained on a number of occasions that **financial assistance is not provided and that consular officials can only assist if friends or relatives transfer the money.**

The only case which has been recently discussed was connected with two consuls (one was honorary consul) who demanded presents and money to issue visas. The MFA reacted immediately and both consuls are no longer working in respective embassies.³¹

5. Emergency travel document (ETD)

There are two types of documents issued by Latvian consuls: **(i) emergency travel documents (ETDs)**³² and **(ii) return certificate**³³. ETDs are issued to EU citizens, while return certificates are issued to Latvian passport holders. There is a specific regulation on fees for return documents.³⁴ The fee for both types of documents is LVL 10 (4 Euro) for adults and LVL 5 (7 Euro) for children up to the age of 15.

(i) Latvian missions can issue ETDs to persons mentioned in Paragraph 2 of Article 4(2) of the Law on Personal IDs³⁵, i.e., EU citizens (except for Latvian citizens) if there is no consular or diplomatic mission of his/her State of citizenship in the respective place of residence abroad. **Persons should submit an application, photos, a police report and other documents or copies of documents proving the identity of the person. Within one day the Latvian mission gets in contact with the competent authority of the respective State. The ETD is issued within one working day after confirmation has been received from the State.**

(ii) In cases when a passport issued by Latvia has been stolen or lost or otherwise cannot be used for travel, Latvian passport holders are asked to approach the Latvian mission or the honorary consul to get ‘**return certificate**’ which allows travel to Latvia. According to Article 4(1) of the Law on Personal IDs a return certificate can be issued to a Latvian citizen, a non-citizen or a stateless person holding a valid residence permit in Latvia or to a refugee recognized in Latvia.

A person should fill in an application, submit a police statement on the fact of the loss and 2 photos. If information about the person can be found in the Population Register or the Information System on Passports, the return document is issued within one working day. The validity of the document is no longer than 30 days. In addition the person is required to pay a fee. If the person has no financial means the fee can be transferred from Latvia by relatives or friends.

In its 2006 report the MFA has noted that there have been several cases when consular assistance to Latvian citizens was granted by embassies of other EU

³¹ News portal www.delfi.lv *Raidījums: vēstniecībās Gruzijā un Ukrainā par vīzu noformēšanu prasītas dāvanas un nauda* [TV: in embassies in Georgia and Ukraine presents and money was demanded to issue visa], 18 April 2010.

³² MK Noteikumi Nr. 1422, par atgriešanās apliecībām.

³³ MK Noteikumi Nr. 1420 par pagaidu ceļošanas dokumentu.

³⁴ Noteikumi Nr. 1421 par valsts nodevas apmēru par atgriešanās apliecības un pagaidu ceļošanas dokumenta izsniegšanu un valsts nodevas maksāšanas kārtību. OG No. 200, 21 December 2009.

³⁵ *Personu apliecinājošo dokumentu likums*, OG No. 84, 5 June 2002 as amended by 16 July 2009, OG. No. 120, 30 July 2009.

Member States. According to the Ministry most of them are related to ETD in States where Latvia does not have consular representatives.

A special seminar was organized for consular officials in 2008 about Article 20 ECT. Officials were introduced with ETD template. It was planned that during 2009 the required amendments in legal regulations will be drafted in order to issue ETDs.

6. Relevant diplomatic protection

Diplomatic protection is being viewed more as administrative practice. There is no legal obligation to provide diplomatic protection.

The MFA and the Minister have intervened in cases concerning the custody of children.³⁶ The Minister has taken up those topics during bilateral meetings, while the MFA has assisted other branches of government in strengthening and communicating their position. The MFA and the government also got involved to protect a Latvian company that contracted in Sweden which resulted in a court case before the ECJ.³⁷

Recently the MFA has sent note to Kirgizstan requesting to ensure protection of Latvian investments. It was reported that functioning of one of the banks belonging to Latvian citizen is endangered because temporary government took control over it.³⁸

7. Exercise of consular functions for expats

Latvia has a high number of expats – approximately 39.447 people.³⁹ However, the number of Latvian passport holders residing abroad is much higher because many of them are not registering (properly) as required by the Law on Population Register.

Most of the Latvian expats left Latvia during the occupation period when Latvia was a part of the USSR. The majority of them are now living in the USA, Australia, Canada and the UK. Another group consists of people who were deported during the occupation period and they now live in the Russian Federation. Finally there is a group of people who left Latvia after Latvia joined the EU. They have settled in the UK and Ireland. People who left Latvia during 1990-2004 form a distinct group. The major countries of destination for this group were the USA, Israel and Germany. Since Latvia does not accept dual citizenship the group is insignificant.

One of the consular functions is to support expats and to exercise consular protection. Consular services were most important during the period of regaining independence when consular officials were in charge of taking over registers of Latvian citizens from the consulates who had been keeping them during the time of occupation abroad, and were re-registering citizens of Latvia.

Consulates offer the full spectrum of consular services to Latvian passport holders residing abroad. For instance, consuls prolong passports⁴⁰, perform acts of the

³⁶ The facts of the cases relate to divorce proceedings when parents have different nationalities. Latvian authorities in certain cases refuse to obey judgments of foreign courts which have not taken into account the best interests of child. For these reasons Latvia also intervened in case C-403/09 *PPu Detiček*, 23 December 2009. In other cases Latvia steps in to protect the interests of parent whose children have been taken away to another country without permission by the court (case of children brought to Russia or Australia).

³⁷ Case C-341/05 *Laval un Partneri Ltd.*, 18 December 2007, Rec. 2008, p. I-11767.

³⁸ National News Agency LETA “*Nota par ‘Manas bank’ Kirgizstānai nosūtīta; banka pirmdien cer atsākt darbību*” [Note about ‘Manas bank’ has been sent to Kirgizstan; bank hopes to renew its work], 11 April 2010.

³⁹ Information by Central Election Commission and Office of Citizenship and Migration Affairs. Available at <http://web.cvk.lv/pub/public/29454.html>

Civil Register, issue documents of administrative nature and the like. Expats are also offered the possibility to vote in elections.

Consular officials are also involved in the implementation of the repatriation policy. The basis for this policy is set in the **Repatriation Law**⁴¹ and in the **Regulation on financial assistance for those repatriating**.⁴² The Law was adopted primarily to deal with the consequences of the Soviet occupation when many Latvians and Livs⁴³ were either deported or took refuge in different countries in the West. If there is an international agreement concluded on repatriation it will have priority in application. According to paragraph 4 of Article 9 of the Repatriation Law the relevant documents should be submitted to a Latvian mission abroad which transmits them to OCMA. The documents are legalized accordingly. Latvian missions, on basis of Article 18 of the Repatriation law, issue visa in case if the person has qualified for such a status.

Currently the most important functions are related to the organization of voting possibilities in parliamentary elections and referenda. There are a number of laws and regulations setting out the procedures. Approximately 50 voting stations are established for each of the elections. However, the number differs according to the number of voters in each respective country and their activity. It is planned that in the future voting will be organized by post only.

Consular officials are entitled to register the marriage, death and birth of persons on basis of the Civil Register Law⁴⁴ and to perform functions of notaries.⁴⁵ The registration in the Civil Register, if necessary, is coordinated with local authorities.

Latvia is a small country and its resources are limited. Latvian missions are represented in a relatively small number of countries. At the same time Latvian passport holders are choosing to travel to popular tourist destinations where Latvia does not have missions. **Therefore Latvia strongly supports the establishment of the European External Action Service (EEAS). This would increase the EU capacity for responding to crisis situations in a more efficient way than the current decentralized way of co-operation. The Latvian position is that a widely accessible EEAS would also make the EU citizenship status stronger.**

According to Latvian position in relation to functions of the EEAS the functions of consular protection should be included among the tasks of the EEAS as the first step. Other tasks – such as Schengen visa applications – can be introduced as the second step.

8. Summary

Latvia is a party to most of the international treaties on consular relations and has concluded several bilateral treaties. The EU framework concerning the Lead State concept is also used when possible. Informal arrangements are used on an *ad hoc* basis. This is based on common historic and cultural backgrounds as well as on diplomatic and consular networks.

⁴⁰ In relation to passports *Noteikumi Nr. 1258 par valsts nodevu par pasu izsniegšanu* [Regulation on State duty for passport] are applicable.

⁴¹ Repatriācijas likums, OG No. 155, 10 October 1995.

⁴² *Noteikumi Nr. 275 par materiālās palīdzības sniegšanu repatriantiem* [Regulation No. 275 on financial assistance for those repatriating], OG No. 67, 28 April 2005.

⁴³ Livs are a historic indigenous group of Finno-Ugric descent living near the Baltic Sea.

⁴⁴ OG No. 52, 1 April 2005, in force since 15 April 2005.

⁴⁵ *Noteikumi Nr. 283 par notariālo funkciju veikšanu LR diplomātiskajās un konsulārajās pārstāvniecībās*. It should be noted that inheritance issues are no longer dealt by consuls because they are too complicated and require legal expertise. Since it is not required that consuls should have legal education, those functions cannot be performed by them.

Assistance to EU citizens is provided according to Article 23 TFEU. So far there have been cases when ETD have been issued and assistance has been provided in case of evacuations. Latvian passport holders have also benefitted from co-operation between EU Member States.

The legal framework in general has not been extended by bilateral arrangements. There is only an agreement between the three Baltic States which provides a more detailed co-operation and mutual obligations in relation to consular protection. **Family members are offered help (consular assistance) in crisis situations, but otherwise they are not offered consular services or protection.**

9. List of important documents

International treaties and related national instruments

1.

Title: Draudzības, tirdzniecības un konsulāro tiesību līgums starp Latviju un ASV

Publication reference: OG No. 79, 21 March 1997

Entry into force: 25 July 1928

English title: Treaty on Friendship, trade and consular law between Latvia and the USA

2.

Title: Konsulārā konvencija starp Latvijas Republiku un Polijas Republiku

Publication reference: OG No. 14, 15 April 1993

Entry into force: 20 October 1993

English title: Consular Convention between the Republic of Latvia and the Republic of Poland

Short summary: General convention aiming to simplify consular assistance for the protection of rights and interests of citizens

3.

Title: Krievijas Federācijas un Latvijas Republikas konsulārā konvencija

Publication reference: OG 150 (433), 30 September 1995

Entry into force: 30 September 1995

English title: Consular Convention between Russian Federation and the Republic of Latvia

Short summary: General convention aiming to simplify consular assistance for the protection of rights and interests of citizens

4.

Title: LR valdības, Igaunijas Republikas valdības un Lietuvas Republikas valdības līgums par konsulāro sadarbību un palīdzību

Publication reference: OG No. 302, 15 September 1999

Entry into force: 23 September 1999

English title: Agreement on consular cooperation and assistance among Governments of Latvia, Estonia and Lithuania

Short summary: The Agreement provides for mutual assistance in cases of death, serious casualties or illnesses, arrest, detention, victims of violence, return and notarial assistance in cases when missions of nationality are not available. Detailed arrangements for exchange of information.

5.

Title: Par Latvijas Republikas un Uzbekistānas Republikas konsulāro konvenciju

Publication reference: OG No. 151, 23 September 2004

Entry into force: 24 September 2004

English title: Consular Convention between Republic of Latvia and Republic of Uzbekistan

Short summary: Very detailed rules to functions of consular mission. Alternative to Vienna Convention

Law and regulations

6.

Title: Likums par Latvijas Republikas starptautiskajiem līgumiem

Publication reference: OG No. 11, 26 January 1994

Entry into force: 10 February 1994

English title: Law on International agreements of the Republic of Latvia

Short summary: Establishes procedures for ratification of international agreements, their implementation and other issues related to international agreements

7.

Title: Konsulārais reglaments

Publication reference: OG No. 72, 18 June 1994

Entry into force: 3 July 1994

English title: Consular Statute

8.

Title: Diplomātiskā un konsulārā dienesta likums

Publication reference: OG No. 155, 10 October 1995

Entry into force: 24 October 1995

English title: Law on Diplomatic and Consular Service

Short summary: Law defines the status, tasks, posts of diplomatic and consular service

9.

Title: Civilstāvokļa aktu likums

Publication reference: OG No. 52, 1 April 2005

Entry into force: 15 April 2005

English title: Law on Civil Acts Register

Short summary: Prescriptions on when and under what circumstances consular officials can issue death, birth or marriage certificates.

10.

Title: Dokumentu legalizācijas likums

Publication reference: OG No. 56, 4 April 2007

Entry into force: 18 April 2007

English title: Law on legalization of documents

Short summary: Law provides that validation should be performed by officials of diplomatic and consular service and describes procedures for public documents and *apostille* depending whether State in relation to which validation is performed has ratified the Hague Convention of 5 October 1961

11.

Title: Noteikumi Nr. 1333 par Ārlietu ministrijas sniegto konsulāro maksas pakalpojumu cenrādi

Publication reference: OG No. 187, 27 November 2009

Entry into force: 1 January 2010

English title: Regulation of the Cabinet of Ministers No. 1333 on Price-list for consular services provided by the Ministry of Foreign Affairs

Short summary: The Regulation replaced previous Regulation No. 1036 which was in force since 27 December 2005

12.

Title: Personu apliecinošu dokumentu likums

Publication reference: OG No. 84, 5 June 2002 and OG No. 120, 30 July 2009

Entry into force: 1 July 2002, as amended by 16 July 2009

English title: Law on Personal IDs

Short summary: The Law was amended to include two articles – on return certificate and ETD.

13.

Title: Noteikumi Nr. 1420 par pagaidu ceļošanas dokumentu

Publication reference: OG No. 200, 21 December 2009

Entry into force: 22 December 2009

English title: Regulation of the Cabinet of Ministers No. 1420 on emergency travel document

Short summary: Regulation provides for procedures for issuing ETD. Section 4 states that within the term of one working day mission forwards copies of documents submitted to competent authorities of the State of citizenship and after receiving approval issues ETD

14.

Title: Noteikumi Nr. 1421 par valsts nodevas apmēru par atgriešanās apliecības un pagaidu ceļošanas dokumenta izsniegšanu un valsts nodevas maksāšanas kārtību

Publication reference: OG No. 200, 21 December 2009

Entry into force: 22 December 2009

English title: Regulation of the Cabinet of Ministers No. 1421 on State duty for issue of return document and temporary travel document and procedure for payment of State duty

Short summary: Regulation replaced earlier Regulation No. 476 which was in force since 14 July 2007

15.

Title: Noteikumi Nr. 1422 par atgriešanās apliecībām

Publication reference: OG No. 200, 21 December 2009

Entry into force: 22 December 2009

English title: Regulations of the Cabinet of Ministers No. 1422 on return certificate

Short summary: Both missions and honorary consuls can issue return certificate. If there are no representatives, Consular Department issues the return document. Regulations describe further procedures and data to be included in return certificate.

16.

Title: Noteikumi Nr. 283 par notariālo funkciju veikšanu LR diplomātiskajās un konsulārajās pārstāvniecībās

Publication reference: OG No. 63, 23 April 2008

Entry into force: 24 April 2008

English title: Regulation of the Cabinet of Ministers No. 283 on Performance of notarial functions in diplomatic and consular missions

Short summary: Describes the procedure and lists the functions of officials performing notary acts. Note that inheritance issues are no longer dealt by consuls.

17.

Title: Noteikumi Nr. 839 par kārtību, kādā kārojams konsulārais reģistrs, reģistrā iekļaujamām ziņām un to izmantošanu

Publication reference: OG No. 162, 17 October 2008

Entry into force: 18 October 2008

English title: Regulation of the Cabinet of Ministers No. 839 on procedure for maintaining consular register, information to be collected for register and its use

Short summary: Regulation provides for voluntary registration, free of charge by travellers. Regulation also provides for data to be included and length of storage of data.

Websites, reports

18.

Title: Ārlietu ministrijas 2007. gada darba pārskats

Publication reference: available at

<http://tpi.mk.gov.lv/ui/documentcontent.aspx?Type=attach&ID=777>

English title: MFA Annual Report 2007

19.

Title: Ārlietu ministrijas 2008. gada darba pārskats

Publication reference: available at <http://www.am.gov.lv/data/file/l/gadaparskats2008.pdf>

English title: MFA Annual Report 2008



Lithuania - Lietuva (LT)

1. Introduction

This Report contains the legal framework and national practice of the Republic of Lithuania on diplomatic and consular protection as of 10 November 2009.

This Report is based on Law Consular Statute (adopted on 9 May 1995 – No I-886, as last amended on 25 May 2006 – No X-619), other national legal acts as well as interviews and information from the officials of the Lithuanian Ministry of Foreign Affairs.

However, it must be noted that case law concerning the consular assistance or diplomatic protection does not exist at the moment.

2. Legal framework

2.1. International law

Multilatera agreements. International law sources applicable in the Republic of Lithuania are as follows:

- Vienna Convention on Diplomatic Relations.
- Vienna Convention on Consular Relations. Lithuania is a party of the Convention since 14 February 1992. The Republic of Lithuania has ratified the treaty without making any declarations or reservations.
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80). The Republic of Lithuania is bound by the provisions of this document since 11 September 2009. No reservations or declarations have been made.

Bilateral or trilateral agreements. To this regard it must be noted that Lithuania has concluded two kinds of agreements. **(i)** First group of agreements targets consular assistance as a main object. **(ii)** Another group of agreements includes only some provisions concerning the consular assistance since the object of the agreements extends further than consular assistance. It is worth mentioning that Lithuania has concluded bilateral agreements:

- Consular Convention between the Republic of Lithuania and the People's Republic of China (came into force on 10/5/1993).
- Consular Convention between the Republic of Lithuania and the Republic of Poland (came into force on 15/12/1993).
- Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Poland on consular assistance in the Kingdom of Morocco (came into force on 9/9/2000).
 - Protocol to the Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Poland on consular assistance in the Kingdom of Morocco (came into force on 31/10/2000).
- Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Poland on consular assistance in the Republic of Tunisia (came into force on 9/9/2000).

- o Protocol to the Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Poland on consular assistance in the Republic of Tunisia (came into force on 31/10/2000).
- Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Poland on consular assistance in the Democratic and Popular Republic of Algeria (came into force on 9/9/2000).
 - o Protocol to the Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Poland on consular assistance in the Democratic and Popular Republic of Algeria (came into force on 31/10/2000).
- Consular Agreement between the Republic of Lithuania and the Republic of Turkey (came into force on 28/2/1998).
- Consular Convention between the Republic of Lithuania and the Russian Federation (came into force on 30/11/1995).
- Consular Convention between the Republic of Lithuania and Ukraine (came into force on 14/5/1998).
- Consular Convention between the Republic of Lithuania and Georgia (came into force on 8/3/2005).

According to the sources of the Ministry of Foreign Affairs, before the accession to the EU the Republic of Lithuania could only provide the consular aid where it had diplomatic missions. In North Africa, however, the Republic of Lithuania did not have diplomatic missions. Therefore Republic of Poland agreed to provide consular aid to the citizens of the Republic of Lithuania since it had diplomatic missions in Algeria, Tunisia and Morocco. Thus the special agreements were concluded in 1999-2000. Since the membership in the EU, concluding bilateral agreements has become irrelevant as consular aid is regulated by the EU acquis.

2.2. Transposition of international law into national law

Article 138(3) of the Constitution of the Republic of Lithuania states that international treaties ratified by the *Seimas* shall be a constituent part of the Lithuanian legal system. According to Article 11 of the Law on Treaties the treaties of the Republic of Lithuania that have entered into force shall be binding in the Republic of Lithuania. **If a ratified treaty of the Republic of Lithuania which has entered into force establishes norms other than those established by the laws, other legal acts which are in force at the moment of conclusion of the treaty or which entered into force after the entry into force of the treaty, the provisions of the treaty shall prevail.**

If a law or any other legal act has to be passed for the purpose of implementation of a treaty, the Government shall submit to the *Seimas* according to the established procedure a draft of the appropriate law or shall adopt an appropriate resolution or ensure according to its competence the passing of another legal act. Treaties of the Republic of Lithuania shall be ratified by the *Seimas* by a law. Treaties shall be submitted to the *Seimas* for ratification by the President of the Republic on his own initiative or on the proposal of the Government.

2.3. Implementation of European Union law into national law

The Republic of Lithuania is bound by the relevant EU provisions.

The provisions on consular protection may be found in Law Consular Statute which implements Decision 95/553/EC. It must be noted that these provisions are

implemented through the Law Consular Statute which guarantees the consular assistance to the EU citizens - Arts. 2(3), 41 and 42.

Further information on policy documents and guidelines related to consular assistance are available on the website of the Ministry of Foreign Affairs¹.

It is worth mentioning that on 13 October 2009 the Ministry of Foreign Affairs of the Republic of Lithuania and the European Commission have signed the agreement on the public information concerning the EU.

Naturally as a Member State the Republic of Lithuania takes all available measures to ensure that all individuals would be entitled to use the consular assistance by providing all information available in the website of the Ministry. An additional source of information available to persons seeking consular assistance would be brochures published by the Ministry of Foreign Affairs².

2.4. National law

2.4.1. National rules on consular protection

The provisions on consular assistance were initially originated in the **Constitution of the Republic of Lithuania**. The Constitution denotes the obligation of the State of Lithuania to protect its citizens abroad and prohibits the extradition of a citizen of the Republic of Lithuania to another State unless an international treaty establishes otherwise (Article 13 para.1).

National laws adopted by Parliament of the Republic of Lithuania:

- **Law Consular Statute**. It is the principal document regulating the domain of consular law. The purpose of the law is to establish the powers and liability of consular officers, the basis for the activities of consular posts, the conditions and procedure for the provision of consular assistance and performance of other consular functions as well as the principles of provision of consular assistance to citizens of the European Union.
- **Law on Diplomatic Service**. The law defines the functions of diplomatic mission abroad, establishes the requirement to diplomatic mission to defend the rights and lawful interests of the Republic of Lithuania, its citizens, enterprises and other legal persons.
- **Law on Citizenship**. The provisions of the law explicitly states the obligation of the Republic of Lithuania to protect and take care of its citizens beyond the borders of the Republic of Lithuania and denotes that these provisions are further elaborated in other documents primarily on the Law Consular Statute.

Other enactments at the governmental level:

- Resolution of the Government of the Republic of Lithuania concerning the Regulation of the Ministry of Foreign Affairs.³
- **Resolution of the Government** of the Republic of Lithuania concerning the rules for the financial aid from the State granted for the transportation of the remains of the deceased citizens of the Republic of Lithuania and Material assistance provided for citizens of the Republic of Lithuania injured in a foreign State.

¹ Ministry of Foreign Affairs of the Republic of Lithuania, www.urm.lt.

² Available in Lithuanian at website of Ministry of Foreign Affairs <http://www.urm.lt/index.php?272607155>.

³ Available in Lithuanian at the website of the Parliament http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=353402.

- [Order](#) of the Minister of Foreign Affairs of the Republic of Lithuania concerning rules of issue and perfection of certificate of return.
-

2.4.2. Remedies against a refusal to provide consular protection

The citizens may complain according to the procedure established by national law. **The procedure is established under the *Law on the Proceeding of Administrative Cases***⁴.

Firstly, an individual may submit a **complaint against the public institution** where it is indicated that his/her rights or lawful interests have been violated and it is requested to defend them. The institution according to the procedure established by national legislation⁵ must examine the complaint and adopt the decision.

In the case an applicant contests the decision of the institution, he may appeal to the Chief Administrative Disputes Commission⁶, administrative court and, lastly, to the Supreme Administrative Court of Lithuania⁷.

In the case of abuse of power, bureaucracy [maladministration] or violation of human rights and fundamental freedoms, the citizens may address to the *Seimas* Ombudsman's Office of the Republic of Lithuania.

2.5. Documentation of consular protection

It must be noted that Lithuania does not have an official and systematic code on consular protection. The most important provisions on consular functions including the provisions on consular protection are implemented in the single document i.e., Law Consular Statute. Naturally, the detailed provisions of the Law Consular Statute are elaborated in resolutions adopted by the Government of the Republic of Lithuania and orders of Ministry of Foreign Affairs. The essential provisions of the Law Consular Statute can be classified according to the execution of consular functions, i.e., issuing passports and identity cards, visas, facilitated transit documents, notaries' deeds, children and adoption, legalisation and other. Therefore, the provisions of the Law Consular Statute will be explicitly elaborated in the report.

Consular Department of the Ministry of Foreign Affairs has also prepared a Consular Guide as a guide book of reference to the consular agents working abroad. It must be noted that the Guide covers the law, situations and advices to the consular agents. However, it must be noted that **the Consular Guide is limited exclusively to consular officials**; therefore explicit information is not available.

2.6. Information to citizens on consular protection

Information to citizens on consular protection is available on the website of the Ministry of Foreign Affairs⁸. Consular information is available in Lithuanian, English, Russian and French. Citizens also could find information on the websites of diplomatic missions and consular posts of the Republic of Lithuania⁹ as well.

⁴ Available only in Lithuanian http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=370762

⁵ *Law on Public Administration*, Chapter III

http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=315906

⁶ <http://www.vagk.lt>

⁷ <http://www.lvat.lt/en.aspx>

⁸ <http://www.urm.lt/>

⁹ The list of diplomatic missions and consular posts and their websites is available at <http://www.urm.lt/index.php?1065390886>

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Lithuanian bilateral agreements with third countries do not include provisions protecting the EU citizens working and living in third countries.

Lithuania has not informed third countries about the practice of extending protection to the EU citizens.

Lithuanian bilateral agreements with third countries do not include provisions extending consular protection to the EU citizens' family members who are not nationals of a Member State.

Lithuania has not extended consular protection to the family members of the EU citizens who are not nationals of a Member State, except in the case of evacuation. This situation could be reflected in case of the Israeli – Lebanon conflict when Lithuania evacuated the nationals and their spouses non EU nationals.

Lithuania has not started negotiations concerning agreements with third countries that include provisions protecting the EU citizens working and living in third countries.

Lithuania has not started negotiations concerning agreements with third countries that include provisions extending consular protection to the EU citizens family members who are not nationals of a Member State.

Implementing Article 8 of Vienna Convention on Consular Relations, the Republic of Lithuania has concluded a trilateral agreement with the Republic of Latvia and the Republic of Estonia. Referring to this Agreement the Parties agreed to provide consular assistance to the citizens in the third countries if there is no consular post of the Party asking to provide the assistance. **Similar provisions are included in the bilateral agreement between the Republic of Lithuania and the Republic of Poland.** According to the provisions of the Agreement the Republic of Poland exercise the consular functions in Rabat and Casablanca (Morocco) as well as in Tunisia and Algeria. Therefore Morocco, Tunisia and Algeria are informed about the fact that the Republic of Poland exercise consular functions on behalf of the Republic of Lithuania. However it must be noted that the **EU citizens address to consular posts of the Republic of Lithuania rarely. Therefore, in most cases the consular assistance is provided for the EU citizens of neighbouring countries.**

Another aspect which is important in the context of the execution of the consular functions would be the **Consular Convention between the Republic of Lithuania and the Russian Federation** which provides consular protection of the other Contracting Party's citizens in the receiving State, unless the latter disagrees.

3.2. Statistical data on consular practice

General consular assistance

Year	Consular protection for citizens of the Republic of Lithuania: in total	Assistance to Persons Lacking Full Capacity	Assistance in the Event of an Accident or Illness	Other consular assistance	Assistance to Persons Being Detained, Serving a Sentence or Suspected of Having Committed a Crime
2006	1.627	77	977	173	2.854
2007	1.538	102	955	450	3.308
2008	1.520	213	823	324	3.153

Consular aid to the EU citizens

Year	No of cases	Details
2006	1 case	(Emergency) travel document issued to citizen of the Republic of Latvia
2007	1 case	(Emergency) travel document issued to citizen of the Republic of Latvia
2008	12 cases	6 cases of issuing (Emergency) travel documents (i.e., 4 citizens of the Republic of Latvia, 2 citizens of the Republic of Estonia) 6 citizens of the Republic of Estonia were evacuated from Georgia

Registration of Records of Civil Status

Year	Registration in the event of marriage	Registration in the event of birth	Registration in the event of death
2006	No data available	No data available	No data available
2007	No data available	No data available	No data available
2008	87	6	4

Notarial Acts Performed by Consular Officers

Year	Legalisation of documents	Notarial acts
2006	2.663	9.713
2007	1.502	12.289
2008	951	15.742

4. Consular protection in detail

Republic of Lithuania primarily refers to a few principal sources:

- Vienna Convention on Consular Relations.
- EU law¹⁰.
- Law Consular Statute.
- Other national legal acts (resolutions, decisions, rules, orders, etc.).

As to Consular network and honorary consuls functions, in the Republic of Lithuania consular officers may be (a) diplomats employed at diplomatic missions and consular posts entrusted with the exercise of consular functions; (b) honorary consular officers.

An honorary consular officer may be a person appointed for a fixed term by the Minister of Foreign Affairs who, with the consent of the host State, exercises consular functions therein and performs other tasks entrusted to him by the Minister of Foreign Affairs. The appointed honorary consular officer is not a civil servant and does not receive remuneration from the State budget. The procedure for the establishment and closure of consular posts headed by honorary consular officers and the procedure for the appointment and recall of honorary consular officers as well as the rules governing the activity of honorary consular officers are approved by an order of the Minister of Foreign Affairs. The main tasks of honorary consuls is to promote the friendly, economic, trade, cultural, scientific relations between the Republic of Lithuania and the receiving State; to protect interests of the citizens of the Republic of Lithuania and legal persons interests and to provide the help they may require; to represent the Republic of Lithuania in public meetings; to maintain relations with the expats living in the receiving State; to implement other functions necessary for the cooperation between the Republic of Lithuania and the receiving State.

The information on consular network (including honorary consular officers) and locations is available on the website of the Ministry of Foreign Affairs¹¹.

4.1. Right to Consular assistance

Law Consular Statute clearly defines the scope of application of the consular assistance. According to the provisions of Article 2 of this Statute, **consular assistance means consular functions exercised by consular officers upon the request or without the request of citizens of the Republic of Lithuania where it transpires that a person is in distress, a victim of a crime or in a helpless state or under other circumstances provided for in this Statute.** Consular assistance is also provided upon the request of citizens of the European Union, in accordance with the procedure laid down in Chapter IV of this Statute as well as to **stateless persons legally being in a foreign State in possession of a permit for permanent residence in the Republic of Lithuania.**

As a general rule the consular aid is provided to citizens of the Republic of Lithuania, however the Consular Guide expands the provisions of the Law Consular Statute and foresees the possibility to provide the aid for **stateless persons having residence permit** and to the EU citizens. These cases include the cases of accident or illness, aid for victims of crime, cases of death (citizens, stateless persons), the aid for arrested or detained citizens or stateless persons having residence permit and EU citizens,

¹⁰ It must be noted that applicability of the EU law in the Republic of Lithuania differs. Some provisions of the EU law are applied directly while others are incorporated into national law.

¹¹ See <http://www.urm.lt/index.php?1366094069>

assistance to persons who have lost their travel documents, whose travel document is no longer fit for use or has expired (citizens, stateless persons, EU citizens and other cases foreseen by law). **No case law is available on this issue.**

4.2. Assistance in the cases of death and repatriating remains

It must be noted that assistance in the event of death is provided in two cases:

- (i) In the case of death of the citizens of the Republic of Lithuania, stateless persons and persons having residence permit in the Republic of Lithuania;
- (ii) Transporting the remains for burial to Republic of Lithuania of the citizens of other states than Republic to Lithuania and remains of stateless persons.

Upon receiving information about the death of a citizen of the Republic of Lithuania in the host State, a consular officer must forward this **information** to the Ministry of Foreign Affairs of the Republic of Lithuania and the Police Department under the Ministry of the Interior so that the latter notifies the spouse (cohabitee) of the deceased citizen of the Republic of Lithuania or his close relatives. In the event of their absence this information about the fact of death of the citizen may be provided to other persons.

A consular officer has to grant an authorisation to transport the remains of the deceased to Lithuania in accordance with the procedure established by the Minister of Health and the Minister of Foreign Affairs of the Republic of Lithuania unless international treaties to which the Republic of Lithuania is a party provide otherwise.

Where no person can be found to assume responsibility for the funeral or cremation of the deceased citizen of the Republic of Lithuania or transportation of remains to Lithuania, a consular officer shall apply to the competent authorities of the host State in relation to organising a funeral or cremation of the deceased citizen of the Republic of Lithuania in accordance with the legal acts and the usual procedure in the host State. Upon the request of the spouse (cohabitee), close relatives or a person designated as the citizen's representative while the citizen was still alive, a consular officer shall assist in receiving information on the cause of death of the deceased Lithuanian citizen if there are no other ways to receive such information in accordance with the effective laws of the host State.

In the case of death and transporting the remains of the citizens of the Republic of Lithuania it must be noted that neither Ministry of Foreign Affairs nor diplomatic mission or consular post provide financial assistance. The citizens may request for financial aid from the municipality according to their location however in most cases the financial burden falls on the shoulders of the next of kin.

4.3. Assistance in cases of serious accident or serious illness

Consular assistance is provided for:

- Citizens of the Republic of Lithuania;
- Stateless persons legally being in a foreign State in possession of a permit for permanent residence in the Republic of Lithuania;
- EU citizens.¹²

¹² 1. Consular assistance shall only be provided if all of the following conditions are fulfilled:

- 1) the person is a citizen of one of the European Union Member States;
- 2) the citizen of the European Union has got into a complicated situation in a State which is not a member of the European Union and is in need of consular assistance;

In the event of an accident or illness, a consular officer has to **assist citizens** of the Republic of Lithuania in **contacting** the spouse (cohabitee) or close relatives or any other person in Lithuania specified by the citizen, assist in **receiving medical aid** or **returning to Lithuania**. A consular officer is obligated to provide the necessary information or to assist in obtaining it for an injured or ill citizen of the Republic of Lithuania or his spouse (cohabitee) or close relatives or any other person specified by the citizen making arrangements for his transportation to Lithuania.

There was no case law or information available which would reveal problematic aspects of protection of residents by Republic of Lithuania.

4.4. Assistance in cases of arrest or detention

Persons entitled to assistance:

- Citizens of the Republic of Lithuania;
- Stateless persons legally being in a foreign State in possession of a permit for permanent residence in the Republic of Lithuania;
- The EU citizens (if the circumstances mentioned above are fulfilled).

Consular officer provides consular assistance to persons being detained, serving a sentence or suspected of having committed a crime according to the provisions of [Law Consular Statute](#) (Art. 18). Consular assistance is not provided to holders of double nationality if the person is arrested in the State whose citizenship he possesses. Consular assistance is provided only if the person being detained, serving a sentence or suspected of having a crime requests for it.

If a citizen of the Republic of Lithuania is being detained or is serving a sentence or is suspected of having committed a criminal act in a consular district, a consular officer has to take into account the legislation of the host State and to contact or, where necessary, meet this person upon a justified request from him, his authorised representative, his spouse (cohabitee) or close relatives. Upon the request of the Lithuanian citizen, a consular officer is obligated to ascertain that the citizen has been provided with a defence counsel and other legal aid in accordance with the local laws also whether he has been provided with a translator, and where necessary, arrange for such legal aid and translator to be provided. Where possible a consular officer should **keep in contact with the citizen** of the Republic of Lithuania who is serving a sentence of imprisonment and shall ascertain that the conditions of detention of the citizen of the Republic of Lithuania are not worse than those of the citizens of the host State.

4.5. Assistance to victims of violent crime

Persons entitled to assistance:

- Citizens of the Republic of Lithuania;
- Stateless persons legally being in a foreign State in possession of a permit for permanent residence in the Republic of Lithuania;
- The EU citizens (if the circumstances are fulfilled).

3) There is no diplomatic mission or consular post of the European Union Member State of which the citizen is a national in the host State.

2. The European Union citizenship shall be proven upon presentation of a passport or an identity card. In the event of loss or theft of those documents, another proof of citizenship may be presented which, if necessary, could be verified by the authorities of the State of which the citizen is a national or by the nearest diplomatic mission or consular post representing this State.

According to the provisions of Law Consular Statute a consular officer has the **duty to assist citizens of the Republic of Lithuania who became victims of crime in obtaining medical and legal aid and services of a translator, as well as to assist in contacting** their spouse (cohabitee) or close relatives or any other person in Lithuania specified by the citizens. The consular officer has also the **obligation to help victims of violent crime to come back to Lithuania**.

The assistance is provided in cases of serious car accident caused the death or serious injury of citizen of the Republic of Lithuania, murder of the citizen of the Republic of Lithuania; robbery, theft or fraud; trafficking in human being; other crimes. Legal basis for the assistance is provided in Vienna Convention on Consular Relations, Law Consular Statute, acts adopted by the Government of the Republic of Lithuania. In the cases of human trafficking the Republic of Lithuania also applies the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000.

4.6. Relief and repatriation of distressed citizens

Law Consular Statute denotes that every citizen of the European Union being in the territory of a third country in which the State of which he is a national is not represented shall have the right to receive consular assistance from a diplomatic mission or consular post of the Republic of Lithuania under the same conditions as citizens of the Republic of Lithuania. **Financial assistance to citizens of the European Union may only be provided in extraordinary cases with a prior consent from the competent authority of the European Union Member State of which they are nationals.** An obligation to repay the financial assistance must be executed as a document, which the Ministry of Foreign Affairs of the Republic of Lithuania will forward to the competent authority of the respective European Union Member State.

The practical examples are not numerous, however the aid to EU citizens was provided in the case of issuing (Emergency) Travel Documents or evacuation from the area of conflicts (e.g., Georgia 2008).

4.6.1. Natural disasters

According to Article 14 of [Law Consular Statute](#) in the event of a natural disaster or catastrophe **a consular officer is obligated, where possible, to keep in regular contact with the citizen of the Republic of Lithuania** and to assist him in contacting his spouse (cohabitee) or his close relatives or another person in Lithuania indicated by the citizen. When the life or safety of a citizen of the Republic of Lithuania located in the territory of a foreign State is endangered, a consular officer may, with the consent of the citizen of the Republic of Lithuania, assist in organising his **evacuation** from the crisis zone to the nearest safety zone.

No further practice concerning the assistance to the citizens in the event of a natural disaster or catastrophe is developed. According to the sources of the Ministry of Foreign Affairs of the Republic of Lithuania the consular assistance in Haiti was not provided.

4.6.2. Terrorist acts

According to Article 14 of [Law Consular Statute](#) in the event of act of terrorism or under threat of such circumstances, a consular officer shall, where possible, **keep in regular contact with the citizen of the Republic of Lithuania** in distress and shall

assist him in contacting his spouse (cohabitee) or his close relatives or another person in Lithuania indicated by the citizen. When the life or safety of a citizen of the Republic of Lithuania located in the territory of a foreign State is endangered, a consular officer may, with the consent of the citizen of the Republic of Lithuania, assist in organising his **evacuation** from the crisis zone to the nearest safety zone.

Citizens of Lithuania were not victims of terrorist acts in London (2005), Sharm el-Sheik (2005), Antalya (2005), Dahabo (2006). After above mentioned terrorist acts, the Ministry of Foreign Affairs distributed notes, suggesting to postpone trips to mentioned places.

Cases of **kidnap** are not regulated in Law Consular Statute or any other national legal acts and in the practise was only one such case. On 3 August 2009 five Lithuania crew members have been taken hostage from a cargo ship off the coast of Nigeria. The Crisis control group were settled down and the Government applied to the EU countries, USA and Nigeria for help in negotiations with pirates. Negotiations were successful and on 14 August 2009 all crew members were released.

4.6.3. Pandemics

Cases of pandemics are not included in the list of events, when consular officer should provide consular assistance, but considering other emergency cases in the list (natural disaster, catastrophe, act of terrorism, mass riots, war or armed conflict), the same rules *mutatis mutandis* should be applied in the cases of pandemics: a consular officer shall, where possible, **keep in regular contact with the citizen** of the Republic of Lithuania in distress and shall assist him in contacting his spouse (cohabitee) or his close relatives or another person in Lithuania indicated by the citizen. When the life or safety of a citizen of the Republic of Lithuania located in the territory of a foreign State is endangered, a consular officer may, with the consent of the citizen of the Republic of Lithuania, assist in organising his **evacuation** from the crisis zone to the nearest safety zone.

In the case of 2009 flu pandemic none of Lithuanian citizens applied to consular officer for consular assistance. All citizens returned by their own to Lithuania, where were ensured to proper treatment.

4.6.4. Military conflicts

According to the Article 14 of Law Consular Statute in the event of war or armed conflict or under threat of such circumstances, a consular officer shall, where possible, **keep in regular contact with the citizen** of the Republic of Lithuania in distress and shall assist him in contacting his spouse (cohabitee) or his close relatives or another person in Lithuania indicated by the citizen. When the life or safety of a citizen of the Republic of Lithuania located in the territory of a foreign State is endangered, a consular officer may, with the consent of the citizen of the Republic of Lithuania, assist in organising his **evacuation** from the crisis zone to the nearest safety zone.

Lebanon conflict, 2006

In co-operation and due to efficient sharing of transport resources (land transport, ship and military aircraft) between EU Member States, 26 citizens of the Republic of Lithuania and their family members (children, husbands, wives), who were in possession of a permit for residence in the Republic of Lithuania were evacuated.

Georgia conflict, 2008

The Embassy of the Republic of Lithuania in Georgia has organized registration of the citizens of the Republic of Lithuania and their evacuation to the safety zones. Persons were evacuated by buses to Armenia and by military aircraft to Lithuania. By military aircraft from Georgia not only were evacuated citizens of the Republic of Lithuania, but also citizens of the Republic of Estonia. **Reimbursement of costs was not asked from the evacuated persons.**

4.6.5. Financial advances

According to the Article 22 of [Law Consular Statute](#) a consular officer shall assist citizens of the Republic of Lithuania injured in a foreign State in obtaining material assistance. The rules for material assistance are provided in the Resolution of the Government of the Republic of Lithuania. Material assistance can be divided into two types:

- (i) material assistance from the State budget;
- (ii) material assistance from other sources (e.g., relatives).

Material assistance from the State budget shall be provided for:

- Citizens of the Republic of Lithuania;
- The EU citizens (if the above mentioned circumstances are fulfilled).

Material assistance from other sources shall be provided for:

- Citizens of the Republic of Lithuania;
- EU citizens (if the above mentioned circumstances are fulfilled);
- Stateless persons legally being in a foreign State in possession of a permit for permanent residence in the Republic of Lithuania.

Material assistance from the State budget shall be provided only in exceptional cases, when citizens have no possibilities to get material assistance from other sources (they do not have any possibility to contact relatives or they do not have any relatives or relatives refuse to provide material assistance).

Financial assistance to citizens of the European Union may only be provided in special cases with a prior consent from the competent authority of the Member State of the European Union of which they are nationals.

Material assistance from the State budget shall be provided for:

- Receiving emergency medical aid (in the event of serious illness or accident), when person is not insured by compulsory health insurance or other form of insurance;
- expenses for returning to the Republic of Lithuania (when person became a victim of crime or other violations);
- other cases (when person applied to consular officers for assistance).

It should be noted that material assistance is not provided in cash and persons who have received material assistance are obligated to reimburse the expenditures. In the practice, consular officers usually receive requests for material assistance for returning to the Republic of Lithuania.

4.7. Consular fees

The issues of the charge of consular fees for the actions performed by diplomatic missions and consular posts of the Republic of Lithuania in the course of exercising consular functions is regulated by the **Law on Consular Fees**. The exact rates for the

exercise of consular functions are provided in the Resolution of the Government of the Republic of Lithuania.

The Article 3 of the Law on Consular Fees notes the object of charging consular fees and Article 6 provides the **exemptions** when the consular fees shall not be charged (e.g., examination of applications for the issue of visas to the family members of a citizen of the European Union or a citizen of a Member State of the European Free Trade Association, where such family members are nationals of third countries, as well as to the family members of citizens of the Republic of Lithuania; examination of applications for the issue of visas to aliens travelling to visit a seriously ill close relative or a family member, or to the funeral of a close relative or a family member, or twice a year to visit the grave of a close relative or a family member in the territory of the Republic of Lithuania etc.).

Special issues of the consular fees for the EU citizens are not provided.

4.8. Reimbursement of the assisting State

Reimbursement of expenditures is regulated by the Resolution of the Government of the Republic of Lithuania concerning rules for the financial aid from the State granted for the transportation of the remains of the deceased citizens of the Republic of Lithuania and Material assistance provided for citizens of the Republic of Lithuania injured in a foreign State. According to the Resolution before providing the material assistance, citizen has to confirm in written form obligation to reimburse the expenditures to the Ministry of Foreign Affairs of the Republic of Lithuania in the period of 3 months.

According to Article 41 of [Law Consular Statute](#) the obligation to repay the financial assistance to EU citizens shall be executed as a document, which the Ministry of Foreign Affairs of the Republic of Lithuania shall transmit to the competent authority of the respective Member State of the European Union.

No reimbursement has been required in cases of exceptional situations, e.g., the citizens evacuated from Georgia during the armed conflict in August 2008 were not asked to reimburse the costs.

4.9. Case studies, in particular problematic practices

The Ministry of Foreign Affairs of the Republic of Lithuania denoted several problems that require attention. Firstly, the citizens of the Republic of Lithuania address to the EU diplomatic missions mostly with request to issue Emergency Travel Document. However very often the diplomatic missions of the EU Member States refuse to issue the documents and redirect the citizens of the Republic of Lithuania to diplomatic missions of other EU Member States or claim that they do not possess the necessary documentation. Also, there is a lack of information on the possibility to address to the honorary consular officials of other EU Member States. Most often the citizens of the Republic of Latvia and Republic of Estonia address to the diplomatic missions of the Republic of Lithuania.

5. Emergency travel document (ETD)

According to Article 20 of [Law Consular Statute](#) where a person has lost his travel document, where it is no longer fit for use or it has expired while person is temporarily in a foreign State, a consular officer shall, in accordance with the procedure established by the Minister of Foreign Affairs, issue him with a **certificate of return**. The certificate shall be provided for:

- Citizens of the Republic of Lithuania;
- Citizens of foreign countries in possession of a foreigner passport of the Republic of Lithuania;
- Stateless persons in possession of a permit for temporally or permanent residence in the Republic of Lithuania;
- The EU citizens (if the above mentioned circumstances are fulfilled);
- Minor children born in the host State whose parents or one of the parents are citizens of the Republic of Lithuania (upon receiving the consent of the Ministry of Foreign Affairs of the Republic of Lithuania);
- Aliens in cases specified by international treaties to which the Republic of Lithuania is a party.

Repatriation certificate allows persons just to return to the Republic of Lithuania or to the country of his/her nationality. Travelling to other countries is forbidden.

Regulation of issue of a repatriation certificate is provided by Law Consular Statute and the order of Minister of Foreign Affairs of the Republic of Lithuania concerning issue and perfection of certificate of return.

6. Diplomatic protection

In the Republic of Lithuania, no explicit legal right to diplomatic protection exists. Diplomatic protection is provided only for citizens of the Republic of Lithuania, based on the provisions of the Constitution of the Republic of Lithuania (Art. 13: The State of Lithuania shall protect its citizens abroad), Law on the Diplomatic Service (Art. 9: A Republic of Lithuania diplomatic mission shall perform the following functions in the foreign State where it is accredited: defend the rights and lawful interests of the Republic of Lithuania, its citizens, enterprises and other legal persons), Law on Citizenship (Art. 5: The State of Lithuania shall protect and take care of its citizens beyond the borders of the Republic of Lithuania).

No further practice concerning the diplomatic protection to the citizens is developed.

7. Exercise of consular functions for expats

Consular functions for expatriated persons are provided by consular net of Consular Posts or the Embassies of the Republic of Lithuania. **The assistance provided to expats is no different from conditions and terms as the consular assistance provided to the citizens who temporarily travel or live abroad.** By all means the expats are entitled to the same consular assistance without any discrimination, they should address to the nearest consular post or embassy according to their domicile abroad¹³.

8. Summary

To sum up the aforementioned information it must be noted that the Republic of Lithuania is a party to many, but not all international treaties on consular relations. Lithuania has also concluded some bilateral treaties.

The issue of consular assistance to the citizens of the Republic of Lithuania and the EU citizens abroad is regulated by the provisions of the Law Consular Statute which

¹³ All information on the location of the embassies and consular posts is available on this website: <http://www.urm.lt/index.php?1366094069>.

incorporates the provisions of Decision 95/553/EC and according to Article 23 TFEU. Therefore **there has been the practice of granting consular assistance to the EU citizens, namely by issuing Emergency Travel Documents and in cases of evacuation from international conflicts area.**

Moreover, it should be noted that with a help of other EU Member States, **the citizens of the Republic of Lithuania were also granted consular assistance in the case of international conflict area (Israeli – Lebanon conflict), in the case of kidnapping and the issuing of Emergency Travel Documents.**

The legal framework has not been extended by bilateral arrangements to cover the delegation of consular or diplomatic protection according to Article 23 TFEU, or to provide support for family members who are not nationals of a Member State.

9. List of important documents

International Treaties

1.

Title: Vienos konvencija dėl konsulinių santykių

Publication reference: Official Gazette, 1999, No. 83

Entry into force: 14/2/1992

English title: Vienna Convention on Consular Relations, Vienna, 24 April 1963

2.

Title: Susitarimas dėl mirusiųjų kūnų pervežimo

Publication reference: Official Gazette, 2009, No. 101-4214.

Entry into force: 11/9/2009

English title: Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80).

3.

Title: Konsulinė konvencija tarp Lietuvos Respublikos ir Kinijos Liaudies Respublikos

Publication reference: Official Gazette, 1993, No. 35

Entry into force: 10/5/1993

English title: Consular Convention between the Republic of Lithuania and the People's Republic of China

Short summary: The Parties agreed to establish consular posts, to execute consular functions and to provide the assistance to the citizens of the State Parties.

4.

Title: Konsulinė konvencija tarp Lietuvos Respublikos ir Lenkijos Respublikos

Publication reference: Official Gazette, 1994, No. 28-494.

Entry into force: 15/12/1993

English title: Consular Convention between the Republic of Lithuania and the Republic of Poland

Short summary: The Parties agreed to establish consular posts, to execute consular functions and to provide the assistance to the citizens of the State Parties.

5.

Title: Lietuvos Respublikos ir Rusijos Federacijos konsulinė konvencija

Publication reference: Official Gazette, 1995, No. 99-2204.

Entry into force: 30/11/1995

English title: Consular Convention between the Republic of Lithuania and the Russian Federation

Short summary: The Parties agreed to establish consular posts, to execute consular functions and to provide assistance to the citizens of the State Parties.

6.

Title: Lietuvos Respublikos ir Ukrainos konsulinė konvencija

Publication reference: Official Gazette, 1997, No. 106

Entry into force: 14/5/1998

English title: Consular Convention between the Republic of Lithuania and Ukraine

Short summary: The Parties agreed to establish consular posts, to execute consular functions and to provide the assistance to the citizens of the State Parties.

7.

Title: Lietuvos Respublikos Vyriausybės ir Lenkijos Respublikos Vyriausybės susitarimas dėl konsulinės pagalbos Maroko Karalystėje

Publication reference: Official Gazette, 2000, No. 71-2091.

Entry into force: 9/9/2000

English title: Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Poland on consular assistance in the Kingdom of Morocco

Short summary: The Parties agreed that Republic of Poland will represent the interests of the citizens of the Republic of Lithuania in the Kingdom of Morocco.

8.

Title: Lietuvos Respublikos Vyriausybės ir Lenkijos Respublikos Vyriausybės susitarimo dėl konsulinės pagalbos Maroko Karalystėje Protokolas

Entry into force: 31/10/2000

English title: Protocol to the Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Poland on consular assistance in the Kingdom of Morocco

9.

Title: Lietuvos Respublikos Vyriausybės ir Lenkijos Respublikos Vyriausybės susitarimas dėl konsulinės pagalbos Tuniso Respublikoje

Publication reference: Official Gazette, 2000, No. 71-2092.

Entry into force: 9/9/2000

English title: Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Poland on consular assistance in the Republic of Tunisia

Short summary: The Parties agreed that Republic of Poland will represent the interests of the citizens of the Republic of Lithuania in the Republic of Tunisia

10.

Title: Lietuvos Respublikos Vyriausybės ir Lenkijos Respublikos Vyriausybės susitarimo dėl konsulinės pagalbos Tuniso Respublikoje Protokolas

Entry into force: 31/10/2000

English title: Protocol to the Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Poland on consular assistance in the Republic of Tunisia

11.

Title: Lietuvos Respublikos Vyriausybės ir Lenkijos Respublikos Vyriausybės susitarimas dėl konsulinės pagalbos Alžyro Liaudies Demokratinėje Respublikoje

Publication reference: Official Gazette, 2000, No. 71-2090.

Entry into force: 9/9/2000

English title: Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Poland on consular assistance in the Democratic and Popular Republic of Algeria

Short summary: The Parties agreed that Republic of Poland will represent the interests of the citizens of the Republic of Lithuania in the Democratic and Popular Republic of Algeria.

12.

Title: Lietuvos Respublikos Vyriausybės ir Lenkijos Respublikos Vyriausybės susitarimo dėl konsulinės pagalbos Alžyro Liaudies Demokratinėje Respublikoje Protokolas

Entry into force: 31/10/2000

English title: Protocol to the Agreement between the Government of the Republic of Lithuania and the Government of the Republic of Poland on consular assistance in the Democratic and Popular Republic of Algeria

13.

Title: Lietuvos Respublikos ir Turkijos Respublikos konsulinė sutartis

Publication reference: Official Gazette, 1998, No. 17-400.

Entry into force: 28/2/1998

English title: Consular Agreement between the Republic of Lithuania and the Republic of Turkey

Short summary: The Parties agreed to establish consular posts, to execute consular functions and to provide the assistance to the citizens of the State Parties.

14.

Title: Lietuvos Respublikos ir Gruzijos konsulinė konvencija

Publication reference: Official Gazette, 2001, No. 49-1707

Entry into force: 8/3/2005

English title: Consular Convention between the Republic of Lithuania and Georgia

Short summary: The Parties agreed to establish consular posts, to execute consular functions and to provide the assistance to the citizens of the State Parties.

National legal acts

15.

Title: Lietuvos Respublikos įstatymas Konsulinis statutas

Publication reference: Official Gazette, 1995, No. 43-1047

Entry into force: 25/05/1995 Amendment of 25/05/2006

English title: Republic of Lithuania Law Consular Statute

Short summary: This Statute shall establish the powers and liability of consular officers, the basis for the activities of consular posts, the conditions and procedure for the provision of consular assistance and performance of other consular functions as well as the principles of provision of consular assistance to citizens of the European Union.

16.

Title: Lietuvos Respublikos Diplomatinės tarnybos įstatymas

Publication reference: Official Gazette, 1999, No. 7-140

Entry into force: 15/01/1999 Amendment of 18/07/2009

English title: Republic of Lithuania Law on Diplomatic Service

Short summary: This Law establishes the legal basis for the formation and functioning of the diplomatic service of the Republic of Lithuania, the legal status and social guarantees of diplomats and members of their families.

17.

Title: Lietuvos Respublikos Vyriausybės nutarimas „Dėl valstybės finansinės paramos užsienyje mirusių (žuvusių) Lietuvos Respublikos piliečių palaikams parvežti į Lietuvos Respubliką teikimo ir Materialinės pagalbos teikimo Lietuvos Respublikos piliečiams, nukentėjusiems užsienio valstybėse, taisyklių patvirtinimo“

Publication reference: Official Gazette, 2003, No. 50-2217

Entry into force: 24/05/2003 Amendment of 30/12/2007

English title: Resolution of the Government of the Republic of Lithuania concerning rules for the financial aid from the State granted for the transportation of the remains of the deceased citizens of the Republic of Lithuania and Material assistance provided for citizens of the Republic of Lithuania injured in a foreign State

Short summary: Resolution elaborates in what cases and what amount of financial aid should be provided for the transportation of the remains of the citizens of the Republic of Lithuania and regulates rules of the financial assistance for the citizens of the Republic of Lithuania injured in a foreign State.

18.

Title: Lietuvos Respublikos Užsienio reikalų ministro įsakymas „Dėl Asmens grįžimo pažymėjimo išdavimo ir įforminimo tvarkos aprašo patvirtinimo“

Publication reference: Official Gazette, 2008, No. 72-2772

Entry into force: 27/06/2008 Amendment of 08/02/2009

English title: Order of the Minister of Foreign Affairs of the Republic of Lithuania concerning rules of issue and perfection of certificate of return

Short summary: Order elaborates rules how and in what circumstances should consular officers issue certificates of return.

Websites, reports

19.

Title: Lietuvos Respublikos užsienio reikalų ministerija

Publication reference: www.urm.lt

English title: Lithuanian Ministry of Foreign Affairs

Short summary: The website provides explicit information on how the citizens of the Republic of Lithuania and stateless persons may obtain consular assistance



Luxembourg - Luxemburg (LU)

1. Introduction

This Report contains the legal framework and national practice of Luxembourg on consular and diplomatic protection as of 21 January 2010.

Luxembourg is a small Member State, with approximatively 484.000 inhabitants¹; as remarked in the [Opinion of the Luxembourgian Chamber of Deputies about the Green Paper on Diplomatic and consular protection of Union Citizens in third countries](#), **this topic is very important for Luxembourgian citizens, since their State of origin has a limited diplomatic and consular network². Furthermore, due to the limited number of inhabitants, it is only in rare occasions that Luxembourgian citizens encounter problems abroad.**

The basis of the report is: handbooks on international law and consular practice in general³, the official legal website⁴, the website of the Luxembourgian Ministry for Foreign Affairs⁵ and related internal documents when available.

2. Legal framework

Luxembourg's legal framework consists of multilateral treaties to which Luxembourg is a contracting party; bilateral treaties; obligations under the European treaties; informal arrangements; State policy and practice⁶.

So far, no basic right to consular or diplomatic protection has been established under national law.

2.1. International law

Luxembourg is a party to the following multilateral conventions:

- Vienna Convention on diplomatic relations
 - Vienna Convention on Diplomatic Relations - Optional Protocol on the Compulsory Settlement of Disputes
- Vienna Convention on Consular Relations

¹ <http://www.luxembourg.public.lu/fr/index.html>.

² See the following document: [Avis de la Commission des Affaires étrangères et européennes, de la défense, de la Coopération et de l'Immigration de la Chambre des députés du Grand-Duché de Luxembourg sur le Livre vert sur la protection diplomatique et consulaire du citoyen de l'Union dans les pays tiers](#); for a list of Luxembourgian diplomatic and consular representations, see the official website of the Ministry: <http://www.mae.lu/fr/Site-MAE/Missions-diplomatiques-et-consulaires>.

³ Nguyen Quoc Dinh et Patrick Daillier, *Droit international public*, LGDJ, Paris, 2009, 1709 p.; Pierre-Marie Dupuy, *Droit international public*, Dalloz, Paris, 2008, 9th edition, 879 p.; Eric David et Cédric Van Assche, *Code de droit international public*, Bruylant, Bruxelles, 2008, 4th edition, 1774 p.; Jean-François Flauss (dir.), *La protection diplomatique – Mutations contemporaines et pratiques nationales*, Bruylant, Bruxelles, 2003, 165 p.; Eileen Denza, *Diplomatic Law – Commentary on the Vienna Convention on Diplomatic Relations*, 3rd edition, Oxford Commentaries on International Law, Oxford University Press, 2008, 556 p.

⁴ www.legilux.lu

⁵ www.mae.lu

⁶ Luxembourgian legal scholarship on this topic appears to be nonexistent.

o Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes

- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80)

Luxembourg is a party to the following **bilateral conventions**:

- Bilateral Convention on the field of consular cooperation between the Grand-Duchy of Luxembourg and the **Kingdom of Belgium**
- Bilateral Treaty between the Grand-Duchy of Luxembourg and the **Kingdom of the Netherlands** concerning cooperation in the field of diplomatic representation

It appears that **cooperation in the field of consular protection exists also between Luxembourg and France, and between Luxembourg and Germany⁷**, if necessary (“**au cas par cas**”) and outwards any official specific legal framework.

Luxembourg regards the resulting mutual assistance as globally satisfying and as good practice⁸.

2.2. Transposition of international law into national law

The Vienna Convention on diplomatic relations was approved by a law passed on 17 June 1966 (*Mémorial A n° 31*, 24 June 1966, p. 550).

The Vienna Convention on Diplomatic Relations Optional Protocol on the Compulsory Settlement of Disputes was approved by a law passed on 17 June 1966 (*Mémorial A n° 31*, 24 June 1966, p. 550).

The Vienna Convention on Consular Relations was approved by a law passed on 15 November 1971 (*Mémorial A n° 83*, 3 December 1971, p. 2123 and following);

The Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes was approved by a law passed on 15 November 1971 (*Mémorial A n° 83*, 3 December 1971, p. 2123 and following).

The Agreement on the Transfer of Corpses was approved by a law passed on the 15th June 1983 (*Mémorial A n° 45*, 24 juin 1983, p. 1099).

The Bilateral Convention on the field of consular cooperation between the Grand-Duchy of Luxembourg and the **Kingdom of Belgium** was approved by a law passed on 16 August 1966 (*Mémorial A n° 51*, 21 September 1966, p. 954-957).

Luxembourg is also a party to a bilateral Treaty between the Grand-Duchy of Luxembourg and the **Kingdom of the Netherlands** concerning cooperation in the field of diplomatic representation, approved by a law passed on 29 July 1965 (*Mémorial A n° 54*, 31 August 1965, p. 1003-1006).

In Luxembourg, international law is regarded as being an integral part of national law.

Luxembourg has a **monist conception of the relationships between the domestic legal order and the international legal order**. In fact, Luxembourg even seems to recognize the superiority of international law on domestic norms. For instance, the Luxembourgian Constitutional Court has no jurisdiction to review the conformity of a law approving an international agreement to the national Constitution⁹.

⁷ See the [Avis de la Commission des Affaires étrangères et européennes, de la défense, de la Coopération et de l'Immigration de la Chambre des députés du Grand-Duché de Luxembourg sur le Livre vert sur la protection diplomatique et consulaire du citoyen de l'Union dans les pays tiers](#).

⁸ *Ibid.*

⁹ Article 95 Ter (2) of the Luxembourgian Constitution: “*La Cour constitutionnelle est saisie, à titre préjudiciel, suivant les modalités à déterminer par la loi, par toute juridiction pour statuer sur la*

A law of approbation is needed, and needs to be published, for the international agreement to produce its legal effects¹⁰, but the purpose of the law of approbation is not to transform the international agreement into a national law. Depending on the subject, the approbation can take the form of a law, adopted by the Chamber of Deputies, or of a “*règlement grand-ducal*”¹¹ adopted by the Grand-Duc. Under this double condition of formal approbation and correct publication, international law is therefore directly applicable. This law or this “*règlement grand-ducal*” is only a political tool for the legislative power (in the case where a law is required) or the executive power to practice its political control and to inform the Nation of the adoption of the international agreement¹².

2.3. Implementation of European law into national law

There are no particular provisions in the Luxembourgian Constitution relative to the particular effect of European law into the national legal order. The only indirect provision is Article 95 ter (2).

Art 23 TFEU¹³ and Decision 95/553/EC are directly applicable.

On 27 May 1997, a “*règlement grand-ducal*” has been adopted concerning Decision 95/553/EC¹⁴ to give it its full effect in the national legal order.

On the 27 May 1997, a “*règlement grand-ducal*” has been adopted concerning Decision 96/409/CSFP¹⁵.

2.4. National law

There are no constitutional provisions in the Luxembourgian Constitution devoted to diplomatic or consular protection.

So far, a national consular law or law on diplomatic protection does not exist.

National law on consular protection is essentially composed by the implementation and approbation acts mentioned above. A few “purely” national regulations exist.

The origins of consular protection are found in the law relative to the promulgation of consular regulation and introduction of certain taxes to be perceived by members of consular administration, approved on 20 April 1923¹⁶. On this basis, the *arrêté grand-ducal* of 29 June 1923 concerning settlement of consular service and introduction of certain taxes to be perceived by members of consular administration has been adopted¹⁷. On 29 June 1960, two *arrêtés* have been adopted: one *arrêté grand-ducal* relative to the delivery of passports and perception of fees (which is a new modification

conformité des lois à l'exception des lois portant approbation de traités, à la constitution”. See J. Gerkrath (ed.), *La jurisprudence de la Cour constitutionnelle du Luxembourg 1997-2007*, Pasicrisie luxembourgeoise, Luxembourg, 2008, p. 9.

¹⁰ Article 37 § 1 of the Luxembourgian Constitution: “*Le Grand-Duc fait les traités. Les traités n'auront d'effet avant d'avoir été approuvés par la loi et publiés dans les formes prévues par la publication des lois*”.

¹¹ See Article 37 § 2 and Article 49 bis of the Luxembourgian Constitution.

¹² See M. Thewes, “*La Constitution luxembourgeoise et l'Europe*”, *Annales de droit luxembourgeois* 1992, p. 66-67; P. Pescatore, “*L'autorité, en droit interne, des traités internationaux*”, *Pasicrisie luxembourgeoise* 1962, p. 97.

¹³ The Lisbon Treaty has been approved by law in Luxembourg (law adopted on the 3 July 2008, *Mémorial A* n° 99, 11 July 2008, p. 1302 and following).

¹⁴ *Règlement grand-ducal* adopted on 27 May 1997 (*Mémorial A* n° 49, 10 July 1997, p. 1612).

¹⁵ *Règlement grand-ducal* adopted on 27 May 1997, (*Mémorial A* n° 49, 10 July 1997, p. 1616).

¹⁶ *Mémorial* 1923 p. 337

¹⁷ *Mémorial A* n° 31, 6 July 1923, p. 339, modified in 1943 (*Mémorial A* 1944 p. 23).

of the founding *arrêté grand-ducal* of 1923), and one ministerial *arrêté* defining fees to be charged for affixing visas on passports¹⁸.

Internal guidelines are enacted for consuls and diplomats by the Luxembourgian Ministry but not publically available. Circulars enacted by Belgian consular services towards Luxembourgian services exist as well, they are not communicable and concern mainly the organization of the consular cooperation, and are pretty rare.

The question to know if consular practice is considered as a service to the citizen could probably be answered by reference to the “*Arrêté grand-ducal*” concerning settlement of consular service and introduction of certain taxes to be perceived by members of the consular administration¹⁹. Article 16 § 2 of this “*Arrêté grand-ducal*” states that consuls “owe help and protection to Luxembourgian citizens living abroad”²⁰.

Luxembourgian national authorities acknowledge that the network of national representations is not very developed²¹. We can assume that it is due to the size of the Luxembourgian State, to the mass of staff members required to implement a representation and to the important economic weight in regard with the size of the State and, above all, the number of inhabitants.

This network is however strengthened by the fact that Luxembourgian authorities rely on the Belgian consular representations, and the representations of other EU Member States.

The degree of involvement of representations of other States seems to vary according to diplomatic and consular practice (see, for instance, the reference, in the [*Avis de la Commission des Affaires étrangères et européennes, de la défense, de la Coopération et de l'Immigration de la Chambre des députés du Grand-Duché de Luxembourg sur le Livre vert sur la protection diplomatique et consulaire du citoyen de l'Union dans les pays tiers*](#), to the consular cooperation between Luxembourg and France, and between Luxembourg and Germany).

In general, support can be qualified as a help for self-help. The Foreign Ministry provides first support and enables citizens to organize appropriate assistance, e.g., in providing contacts to professionals (e.g., local administrations, doctors, solicitors, interpreters etc.).

In general, costs remain at the burden of citizens; for instance, the webpage of the Ministry of Foreign Affairs indicates that expenses for hospitalization, repatriation, legal counsel, organization of funerals or repatriation of bodies remain at the burden of citizens or of citizens’ families. Exceptionally, Luxembourg can organize repatriation and pay for it, but only under two conditions: it should be an “exceptionally serious situation” and the State has to be ensured that it will be refunded. Equally exceptionally, Luxembourg could provide financial advances only if it has sufficient guarantee that it will be reimbursed.

¹⁸ *Mémorial A* n° 41, 5 July 1960, respectively p. 1043 and p. 1044.

¹⁹ *Arrêté grand-ducal du 29 juin 1923 portant règlement du service consulaire et introduction de certaines taxes à percevoir par les agents du corps consulaire, tel qu’il a été modifié par l’arrêté grand-ducal du 19 janvier 1943*. For the *arrêté grand-ducal* of the 29th June 1923, see *Mémorial A* n° 31, 6th July 1923, p. 339; for the *arrêté grand-ducal* of the 19th January 1943, see *Mémorial A*, 1943, p. 23.

²⁰ “[Les consuls] doivent aide et assistance aux Luxembourggeois résidant à l’étranger ou qui réclament leur appui”.

²¹ See the [*Avis de la Commission des Affaires étrangères et européennes, de la défense, de la Coopération et de l'Immigration de la Chambre des députés du Grand-Duché de Luxembourg sur le Livre vert sur la protection diplomatique et consulaire du citoyen de l'Union dans les pays tiers*](#). The Commission of the Chamber of Deputies considers that “*l’Etat ne dispose que d’un réseau diplomatique et consulaire peu dense*” (“the State only has a thin diplomatic and consular network”).

2.5. Documentation of consular protection

Luxembourgian legal scholarship is quite confidential. There is no legal study concerning the international behavior and practice of Luxembourg. From time to time, you can find some specific analysis (including analysis of Luxembourgian case-law) in the annually chronicle written by Georges Friden and Patrick Kinsch on the Luxembourgian international law practice²². So far, it seems that nothing has been written about the Luxembourgian consular protection practice.

Luxembourgian official documents are published in the national official legal journal (*“le Mémorial”*) available on the official legal website of Luxembourg²³.

2.6. Information to citizens on consular protection

For Luxembourgian citizens, the website of the Ministry for foreign affairs provides a summary of what they can expect from the consular assistance²⁴. “Consular assistance” is defined, on the official website, as including: assistance in case of loss of travel documents; assistance in case of serious accident; assistance in case of arrest or detention; assistance in case of distressed citizens; assistance in case of death.

Two interesting points about this **webpage**:

- Citizens are asked to look for consular assistance in priority towards national Luxembourgian services, and, if such services are not present on the territory of the State where Luxembourgian citizens are, towards Belgian diplomatic or consular representation. **It is only when there are neither Luxembourgian representations nor Belgian ones that the Luxembourgian citizen is invited to get in touch with the representations of another Member State of the European Union**²⁵.
- **Nothing is said, on this webpage, about the possible extension of consular protection to the family members of the Luxembourgian citizens who are not Luxembourgian.**

From 2011, Luxembourg will put, inside the passports, a kind of label recalling the text of Article 23 TFEU.

Brochures explaining ex-Article 20 EC were distributed among Luxembourgian travel agencies in 2008.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Since the Commission on European and Foreign Affairs of the Luxembourgian Chamber of Deputies supports the idea of including, in Luxembourgian bilateral agreements with third countries (when they exist), provisions protecting Union citizens working and living in third countries, it appears that this practice does not exist currently.

²² For the most recent chronicle, see G. Friden, P. Kinsch, “La pratique luxembourgeoise en matière de droit international public (2006)”, *Annales de droit luxembourgeois* vol. 17-18, 2008, p. 571-599.

²³ www.legilux.lu

²⁴ See www.mae.lu/fr/Site-MAE/VISAS-Passeports/Conseils-aux-voyageurs-Documents-de-voyage-Visas/Voyager-a-l-etranger/Assistance-consulaire.

²⁵ The same instruction is given to Luxembourgian citizens on the national portal for public health: see <http://www.sante.public.lu/fr/rester-bonne-sante/voyages/pendant-sejour/assistance-consulaire/index.html>.

Furthermore, Luxembourgian bilateral agreements (when they exist) do not include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

Luxembourg has not informed third countries of this practice.

3.2. Statistical data on consular practice

No data available.

4. Consular protection in detail

In Luxembourg, the Vienna Convention on Consular Relations, approved by a law adopted on 15 June 1971²⁶ constitutes the legal basis for consular services.

European rules are directly applicable if correctly published.

No relevant cases on consular protection have been recorded so far.

Luxembourgian consular network is not really developed, due to the size of the country and its number of inhabitants. However, Luxembourg can also rely on Belgian and Dutch representations.

The last diplomatic missions opened by Luxembourg are in Thailand and India, which corresponds to the will of Luxembourg to be more present in Asia.

4.1. Right to consular (and diplomatic) protection

In Luxembourg, no right to consular (and diplomatic) protection exists as such. However, Article 16 § 2 of the "*arrêté grand-ducal*" concerning settlement of consular service and introduction of certain taxes to be perceived by members of the consular administration²⁷ states that **consuls "owe help and protection to Luxembourgian citizens living abroad"**.

Consular (and diplomatic) protection seems to be provided only for Luxembourgian and EU-nationals.

Grand-ducal regulation defining conditions, for foreigners, to obtain a travel document²⁸ states that the fact, for a foreigner, to be in possession of a travel document delivered by Luxembourg, does not imply *automatically* that he will benefit from the consular assistance provided by Luxembourgian authorities in case of difficulties encountered abroad²⁹.

The official website of the Ministry of Foreign Affairs does not precise that its consular services are equally open to EU nationals, when their State of origin is not represented in the territory of the State where they are in a difficult situation.

Nothing is officially said about the protection of family members who are not Luxembourgian nor nationals of an EU Member State. However, in practice, it is said that Luxembourg will provide assistance to the family members of the Luxembourgian citizen, if they are not national of an EU Member State.

²⁶ *Mémorial A* 1971, p. 2123.

²⁷ *Arrêté grand-ducal du 29 juin 1923 portant règlement du service consulaire et introduction de certaines taxes à percevoir par les agents du corps consulaire, tel qu'il a été modifié par l'arrêté grand-ducal du 19 janvier 1943.* For the *arrêté grand-ducal* of the 29th June 1923, see *Mémorial A* n° 31, 6th July 1923, p. 339; for the *arrêté grand-ducal* of the 19th January 1943, see *Mémorial A*, 1943, p. 23.

²⁸ *Règlement du 26 juin 2005 fixant les modalités pour l'obtention d'un titre de voyage pour étrangers*, *Mémorial A* n° 20, 4 February 2005, p. 413 (partly modified in 2008 by the grand-ducal regulation of 25 January 2008: see below [Section 4.7](#)).

²⁹ *Ivi*, Art. 5 § 4.

4.2. Assistance in cases of death

Luxembourgian diplomatic or consular missions **inform** the family about the death; Luxembourgian consular missions **assist** the family in obtaining a death certificate and in arranging for the body to be buried, cremated or repatriated to the home country³⁰.

Expenses remain at the burden of the family or of the insurance of the deceased person.

4.3. Assistance in cases of serious accident or serious illness

Luxembourgian diplomatic or consular missions **inform** next-of-kin, and **give advice** on reputable clinics and doctors. They consider, together with the family, the different decisions (hospitalization, repatriation).

In any case, expenses remain at the burden of the citizen, and the Ministry invites its citizens to subscribe an insurance covering expenses linked to repatriation³¹.

4.4. Assistance in cases of arrest or detention

Luxembourgian citizen arrested or detained can ask local authorities to inform the Luxembourgian diplomatic or consular services about its particular situation.

Luxembourgian diplomatic or consular services can ask national authorities the reason and the legal basis of the arrest or detention.

Luxembourgian diplomatic or consular services **inform** – with the consent of the citizen – the national authorities and the family. If possible the **detainee is visited**.

Luxembourgian diplomatic and consular services **monitor the trial** in order to ensure compliance with international law (treatment of foreigners, in particular the principle of fair trial) and domestic law.

Support in finding appropriate legal advice is provided. The costs have to be borne by the detainee³².

4.5. Assistance to victims of violent crime

Luxembourgian diplomatic and consular services will provide **information and counsels** (addresses of local administration, solicitors, interpreters etc.)³³.

4.6. Relief and repatriation of distressed citizens

Luxembourgian diplomatic or consular missions provide **advice and assistance**, in respect with the relevant EU law provisions.

4.6.1. Natural disasters

During the recent Haiti disaster, no Luxembourgian citizen was there. Only Luxembourgian residents were in Haïti at that time, and the assistance has been

³⁰ See www.mae.lu/fr/Site-MAE/VISAS-Passeports/Conseils-aux-voyageurs-Documents-de-voyage-Visas/Voyager-a-l-etranger/Assistance-consulaire, point 5.

³¹ See www.mae.lu/fr/Site-MAE/VISAS-Passeports/Conseils-aux-voyageurs-Documents-de-voyage-Visas/Voyager-a-l-etranger/Assistance-consulaire, point 2.

³² About the assistance in cases of arrest or detention, see www.mae.lu/fr/Site-MAE/VISAS-Passeports/Conseils-aux-voyageurs-Documents-de-voyage-Visas/Voyager-a-l-etranger/Assistance-consulaire, point 3.

³³ See www.mae.lu/fr/Site-MAE/VISAS-Passeports/Conseils-aux-voyageurs-Documents-de-voyage-Visas/Voyager-a-l-etranger/Assistance-consulaire, point 4.

provided by the Belgian services. Another proof of this very close cooperation is that the Luxembourgian official delegation has travelled to Haïti in a Belgian official military plane.

4.6.2. Terrorist acts

There was no Luxembourgian victim during the recent terrorist attacks.

There is no specific provision devoted to the hypothesis of terrorist acts; the reaction of the Luxembourgian services will depend on the context, the country where the terrorist acts take place, the nationality of the other victims (to put in place, possibly, a coordinated assistance) etc.

It is hardly imaginable to condemn, in any way, the negligent attitude of the citizens. No specific provision exists on this topic, and Luxembourg authorities consider that it would be very difficult to enact such a provision.

4.6.3. Pandemics

Luxembourg has never been confronted to that kind of situation. Its reaction would depend on the global context in which this situation would occur.

4.6.4. Military conflicts

Luxembourg has never had to face that kind of situation.

4.6.5. Financial advances

Financial advances and repatriation to the home country will be provided only at utmost urgency and exceptionally³⁴, and only if the State has sufficient guarantee that it will be refunded.

Luxembourg has no specific budget devoted to the expenses caused by the repatriation. Luxembourg therefore needs the guarantee of the family, for instance. It is clearly stated that consular assistance cannot provide financial advances without guarantee of reimbursement.

4.7. Consular fees

Fees are required for visas. Fees required by Luxembourg follows the prescription of the Council decision 2006/440/EC³⁵.

Regarding biometric passports, fees are fixed by a grand-ducal regulation concerning the conditions to obtain a biometric passport, biometric travel document for foreigners, stateless persons and refugees and legalisation³⁶.

³⁴ See www.mae.lu/fr/Site-MAE/VISAS-Passeports/Conseils-aux-voyageurs-Documents-de-voyage-Visas/Voyager-a-l-etranger/Assistance-consulaire.

³⁵ Council decision of 1 June 2006 amending Annex 12 to the common consular instructions and Annex 14a to the common manual on fees to be charged corresponding to the administrative costs of processing visa applications, OJ L 175, 2006, p. 77

³⁶ *Règlement fixant les modalités pour l'obtention d'un passeport biométrique, titre de voyage pour étrangers, apatrides et réfugiés ainsi que pour l'obtention de légalisations*, Mémorial A n° 10, 28 January 2008, p. 108

4.8. Reimbursement of the assisting State

In case of the repatriation by another EU Member State of a Luxembourgian citizen, the official request is made by the Luxembourgian Ministry, and all the information are given prior to the Ministry.

It appears that when Luxembourgian means are used, Luxembourg does not claim for reimbursement. When Luxembourgian citizens are repatriated thanks to the help of other EU Member states (mainly Belgium and the Netherlands), these States do not claim for reimbursement, considering specially the limited number of Luxembourgian citizens involved.

4.9. Case studies, in particular problematic practices

Due to the limited number of inhabitants and of Luxembourgian citizens living abroad in problematic situation (even if there is no official data available), Luxembourg considers that consular assistance and protection are provided efficiently to its citizens thanks to its own services or thanks to the services of the EU Member States with which it has close relations.

The official authorities in Luxembourg are willing to help and assist very efficiently its citizens, because extreme situations are finally very rare. There is no problematic case involving Luxembourgian citizens to report. Problematic situations may occur (but this is only my guess) for Luxembourgian residents (who are not Luxembourgian citizens, and who represent a substantial part of the people living in Luxembourg) but the assistance and protection would, in this case, be provided by the State of origin.

Finally, the experience of Luxembourg in the field of consular cooperation and assistance is very limited, because Luxembourg is not the target of terrorist acts, has very few citizens living in countries where there is an armed conflict etc. Luxembourg has not been really confronted to extreme situations. It explains the fact that the consular cooperation and assistance in this context is based on informal and ad-hoc cooperation.

5. Emergency travel document (ETD)

In case of loss of passport, citizens are provided with an Emergency Travel Document (ETD) according to EU rules. So far, very few ETDs have been enacted.

6. Relevant diplomatic protection

In Luxembourg, no explicit legal right to consular (and diplomatic) protection exists. Consular (and diplomatic) protection seems to be provided only for Luxembourgian and EU-nationals. **In general, consular (and diplomatic) protection does not seem to be extended to family members who are not nationals of a Member State.**

7. Exercise of consular functions for expats

Luxembourg has no data on expats for two main reasons. Firstly, Luxembourgian citizens do not have to register themselves towards Luxembourgian embassies or services of the State they live in. Secondly, it is more complicated to have precise data since many Luxembourgian citizens possess or are eligible for double nationality.

Due to historical and socio-economic considerations, lots of Luxembourgian citizens have migrated to the USA and Brazil at the beginning of the 20th century. There are about 200.000 American citizens currently living in the USA but with Luxembourgian

origins. A substantial part of these American citizens seems to be eligible to obtain the double nationality (American-Luxembourgian) since the adoption of the new Luxembourgian law on nationality; but so far, these citizens cannot be considered as Luxembourgian expats.

Luxembourgian expats are very scattered.

The assistance provided by Luxembourgian diplomatic and consular services is not different from the one provided for short-term travellers, and mainly concerns:

- Passports and travel documents
- Acts as notary and civil registrar and in capacities of a similar kind (marriages are only organized by Luxembourgian authorities in Luxembourg, never by a Luxembourgian representation abroad).
- Certain functions of an administrative nature (like certifications)
- Transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State

Participation to elections for Luxembourgian citizens living abroad is organized by mail.

In its opinion, the Commission for European and Foreign Affairs of the Luxembourgian Chamber of Deputies recognizes that the own Luxembourgian consular and diplomatic network is rather thin.

8. Summary

Luxembourg is a party to most important international treaties on consular relations, and also maintains informal arrangements.

Further cooperations, for instance with Belgium, are based on an historical cooperation between these States, and on common cultural backgrounds, but also on existing diplomatic and consular networks.

Assistance to EU citizens is provided according to Article 23 TFEU. For evacuation actions in the international context, *ad hoc* cooperation between EU Member States has proven to be very helpful³⁷.

The legal framework does not seem to have been extended by bilateral arrangements to cover the delegation of consular or diplomatic protection according to Article 23 TFEU, or to provide support for family members who are not nationals of a Member State. However, in practice, Luxembourg acknowledges that it is not possible to imagine that it will provide assistance and possibly repatriate its citizens, and leave their family members, when they are not national of an EU Member States, even if there is no legal basis.

The Commission for European and Foreign Affairs of the Luxembourgian Chamber of Deputies agrees that the situation could be improved, in term of information provided to European citizens, and in term of visibility for European citizens, and that special provisions could be included in bilateral agreements with third States³⁸.

³⁷ See *Avis de la Commission des Affaires étrangères et européennes, de la défense, de la Coopération et de l'Immigration de la Chambre des députés du Grand-Duché de Luxembourg sur le Livre vert sur la protection diplomatique et consulaire du citoyen de l'Union dans les pays tiers (document COM(2006) 712)*.

³⁸ *Ibid.*

9. List of important documents

International treaties and related national instruments

1.

Title: Convention de Vienne du 18 avril 1961 sur les relations diplomatiques

Publication reference: Mémorial A n° 31, 24 June 1966, p. 550

Entry into force: 17 August 1966

English title: Vienna Convention on Diplomatic Relations, Vienna, 18 April 1961

2.

Title: Convention de Vienne du 18 avril 1961 sur les relations diplomatique, Protocole de signature facultative du 18 avril 1961 concernant le règlement obligatoire des différends

Publication reference: Mémorial A n° 31, 24 June 1966, p. 550

Entry into force: 17 August 1966

English title: Vienna Convention on Diplomatic Relations Optional Protocol on the Compulsory Settlement of Disputes, Vienna, 18 April 1961

3.

Title: Convention de Vienne du 24 avril 1963 sur les relations consulaires

Publication reference: Mémorial A n° 83, 3 December 1971, p. 2123 and following

Entry into force: 8 mars 1972

English title: Vienna Convention on Consular relations, 24 April 1963

4.

Title: Convention de Vienne du 24 avril 1963 sur les relations consulaires, Protocole de signature facultative concernant le règlement obligatoire des différends

Publication reference: Mémorial A n° 83, 3 December 1971, p. 2123 and following

Entry into force: 8 mars 1972

English title: Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes, Vienna, 24 April 1963

5.

Title: Accord sur le transfert des corps des personnes décédées, Strasbourg, 26 octobre 1973

Publication reference: Mémorial A n° 45, 24 June 1983, p. 1099

Entry into force: 22 November 1983

English title: Agreement on the transfer of Corpses, Strasbourg, 26 October 1973

International legal framework for the transfer of corpses

6.

Title: Convention entre le Grand-Duché de Luxembourg et le Royaume de Belgique relative à la coopération dans le domaine consulaire du 30 septembre 1965

Publication reference: Mémorial A n° 51, 21st September 1966, p. 954-957

English title: Convention on the field of consular cooperation between the Grand-Duchy of Luxembourg and the Kingdom of Belgium, 30 September 1965

Short summary: Bilateral cooperation between Luxembourg and Belgium in the field of consular protection – Close cooperation and description of the missions consular diplomatic agents can realize for the other country

7.

Title: Traité entre le Grand-Duché de Luxembourg et le Royaume des Pays-Bas relatif à la coopération dans le domaine de la représentation diplomatique du 24 mars 1964

Publication reference: Mémorial A n° 54, 31 August 1965, p. 1003-1006

English title: Treaty between the Grand-Duchy of Luxembourg and the Kingdom of Netherlands concerning cooperaion in the field of diplomatic representation, 24 March 1964

Short summary: Bilateral cooperation between Luxembourg and the Netherlands in the field of diplomatic representation

Laws and regulations

8.

Title: Loi du 20 avril 1923 concernant la promulgation de règlements consulaires et l'introduction de certaines taxes à percevoir par les agents du corps consulaire

Publication reference: Mémorial 1923, p. 337

Entry into force: 1923

English title: Law relative to the promulgation of consular regulations and introduction of certain taxes to be perceived by members of consular administration

9.

Title: Arrête grand-ducal du 29 juin 1923 portant règlement du service consulaire, modifié par arrête grand-ducal du 19 janvier 1943

Publication reference: Arrête of 29 June 1923: Mémorial A n° 31, 6 July 1923, p. 339; for the Arrête of 19 January 1943, see Mémorial A 1944, p. 23

English title: Arrête grand-ducal concerning settlement of consular service and introduction of certain taxes to be perceived by members of consular administration

10.

Title: Règlement grand-ducal du 27 mai 1997 portant application de la décision des représentants des gouvernements des Etats membres, réunis au sein du Conseil, du 19 décembre 1995, concernant la protection des citoyens de l'Union européenne par les représentations diplomatiques ou consulaires

Publication reference: Mémorial A n° 49, 10 July 1997, p. 1612

Entry into force: 12 July 1997

English title: Règlement grand-ducal of the 27 May 1997 implementing the decision of the representatives of the governments of the Member States meeting within the Council regarding protection for citizens of the European Union by diplomatic and consular representations

11.

Title: Règlement grand-ducal du 27 mai 1997 portant application de la décision de la représentants des gouvernements des Etats membres réunis au sein du Conseil du 25 juin 1996 concernant l'établissement d'un titre de voyage provisoire

Publication reference: Mémorial A n° 49, 10 July 1997, p. 1616

Entry into force: 12 July 1997

English title: Règlement grand-ducal of the 27 May 1997 implementing the decision of the representatives of the governments of the Member States meeting with the Council on the establishment of an emergency travel document

12.

Title: Arrête grand-ducal du 29 juin 1960 concernant la délivrance et les taxes des visas de passeport

Publication reference: Mémorial A n° 41, 5 July 1960, p. 1043

English title: Arrête grand-ducal of the 29th June 1960 relative to delivery of passports and perception of fees

Short summary: Modification of the Arrête of 29 June 1923. Abrogation of the reciprocity tax + see article 3: possible exoneration justified on the ground of international agreements

13.

Title: Arrête ministériel du 29 juin 1960 portant fixation des taxes à percevoir lors de l'apposition de visass sur les passeports

Publication reference: Mémorial A n° 41, 5 July 1960, p. 1044

Entry into force: 6 July 1960

English title: Ministerial arrête (adopted by the Minister for Foreign Affairs) of the 29th June 1960 defining fees to be charged for affixing visas on passports

Short summary: Example of fees for transit visas, travel visas etc.

[Websites, reports](#)

14.

Title: Site officiel du Ministère luxembourgeois des Affaires étrangères

Publication reference: www.mae.lu

English title: Official website of the Luxembourgian Ministry of Foreign Affairs

[Other documents](#)

15.

Title: Avis de la Commision des Affaires étrangères et européennes, de la Défense, de la Coopération et de l'Immigration de la Chambre des Députés du Grand-Duché de Luxembourg

sur le livre vert sur la protection diplomatique et consulaire du citoyen de l'Union dans les pays tiers (document COM(2006) 712)

Publication reference: Available on

http://ec.europa.eu/justice_home/news/consulting_public/consular_protection/contributions/contribution_others_luxembourg_fr.pdf.

English title: Opinion of the Commission for Foreign Affairs, Defense, Cooperation and Immigration of the Luxembourgian Chamber of Deputies on the Green Paper « Diplomatic and consular protection of Union citizens in third countries (COM(2006) 712)

Short summary: Official position of the Chamber of Deputies during the consultation about the Green Paper organized by the European Commission



Malta (MT)

1. Introduction

This Report aims to give an overview of the Maltese legal framework regarding consular affairs. It focuses on the relevant domestic framework and also the status of applicable international treaties vis-à-vis Malta, together with applicable EU law.

In the Maltese legal system there is no specific right to consular protection; this is provided as a matter of practice.

1.1. Terminology - Nationals Acronyms and Definitions

In so far as domestic legislation is concerned, *primary legislation* is enacted by Parliament. Such instruments are called Acts of Parliament. Acts of Parliament are referenced numerically in a chronological order after the Constitution and the Codes, as Chapters of Maltese law. Malta also has *secondary or subsidiary legislation*, which consist of Regulations published under enabling Acts. Regulations are published as legal notices in the Government Gazette. They are referenced numerically as subsidiary legislation (S.L.), with the first digits bearing the Chapter number of the enabling Act under which, they were published.

The Codes. There are five codes: The Criminal Code, Chapter 9 Laws of Malta, the Code of Police Laws, Chapter 10 Laws of Malta, the Code of Organization and Civil Procedure, Chapter 12 Laws of Malta, The Commercial Code Chapter 13 Laws of Malta, the Civil Code, Chapter 16 Laws of Malta.

Cap 144 Consular Conventions Act 1955, Chapter 144 Laws of Malta.

Cap 191 Diplomatic Privileges and Immunities Act 1966, Chapter 191 Laws of Malta.

Cap 304 Ratification of Treaties Act, 1983, Chapter 304 Laws of Malta.

Cap 443 Legal Procedures (Ratification of Conventions Act), 2006, Chapter 443 Laws of Malta.

S.L. 144.01 Consular Conventions (Application) Order 1956, Subsidiary Legislation 144.01.

S.L. 191.01 Application of Part III of the Diplomatic Immunities and Privileges Act Order 1966, Subsidiary Legislation 191.01.

S.L. 406.06 Refund of Value Added Tax in terms of Diplomatic and Consular Arrangements Regulations 1999, Subsidiary Legislation 406.06.

The House of Representatives/the House refers to Malta's unicameral Parliament, which is the only State organ that has a legislative function.

2. Legal framework

2.1 International law

Malta is a party to:

- Vienna Convention on Consular Relations, Malta acceded to this Convention on 10 December 1997.

Malta is not a party to:

- Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETC 80)

2.2. *Incorporation of international law into national law*

Malta follows a dualist approach in this respect and any international treaty to which Malta is a Party must be duly incorporated via an Act of Parliament. The relevant law in this regard is the Ratification of Treaties Act 1983, Cap 304 *Laws of Malta*.

If Malta adheres to a Treaty, which affects or concerns: its status under International law, Malta's security, sovereignty, independence, unity or territorial integrity¹, such a Treaty shall not enter into force with respect to Malta unless its ratification has been authorized or approved by means of an Act of Parliament². In the case of treaties affecting the relationship of Malta with any multinational organization, agency, association or similar body, such a treaty must be endorsed by a Resolution of the House of Representatives. Adherence to treaties that do not fall under the above mentioned categories require only a cabinet decision for ratification³. The instrument of ratification shall be issued under the signature of the Minister responsible for foreign affairs.

Where Malta ceases, or does any act whereby it will cease, to be a Party to a treaty affecting or concerning any of the matters mentioned above, the Minister responsible for foreign affairs shall inform Parliament of the fact, explaining why at the earliest opportunity and in no case later than the second sitting of the House after the expiration of one month from the date of the denunciation or other act whereby Malta ceases or will cease to be a Party to such a treaty.

The Ratification of Treaties Act also demonstrates that International law must be transformed into national legislation for it to be enforced by the Courts because it clearly states⁴ that no provision of a treaty shall become, or be enforceable as, part of the law of Malta except by or under⁵ an Act of Parliament.

Malta's law on consular functions (Cap 144) pre-dates the Vienna Convention on Consular Relations. Malta has however, incorporated the substantive provisions of the Vienna Convention on Diplomatic Relations, Vienna, 18 April 1961 through the Diplomatic Privileges and Immunities Act 1966 (Cap 191) which piece of legislation makes reference to consular privileges and immunities.

2.3. *Implementation of European law into national law*

Art 23 TFEU is directly applicable in Maltese law.

Insofar as concerns consular protection to unrepresented EU nationals in third countries, Decision 95/553/EC and Decision 96/409/CSFP were given effect by administrative

¹ Cap 304, Article 3(1) (a) (b).

² Any act of a foreign State relating to any of these matters shall be laid on the Table of the House of Representatives (Parliament) as soon as practicable by the Minister responsible for foreign affairs together with a motion giving an opportunity to the House to express itself on such act.

³ Cap 304 Article 3 (5).

⁴ Cap 304 Article 3 (3).

⁵ This means that subsidiary legislation issued under an enabling Act can also serve to transform the provisions of a treaty into Maltese law rendering them enforceable by Maltese Courts.

arrangements which were not published in the Government Official Gazette but would have been communicated by internal circular.

Malta's missions are ready to provide consular assistance to unrepresented EU citizens in all cases mentioned in Article 5 of Decision 95/553/EC (including Article 5(2)), but in practice these services have never been requested.⁶

2.4. National law

Malta has a written Constitution based on the British Westminster model, which like all Maltese legislation, is published in Maltese and English, being the two official languages of Malta. The legal system in Malta is based upon the continental system of codification⁷. The Constitution is the supreme law of the land followed by the Codes, which are hierarchically superior to the Acts of Parliament. The Acts of Parliament, also referred to as primary legislation, may be enabling in nature, permitting the Minister responsible to issue subsidiary legislation⁸. International treaties must be transformed into national legislation to become part of Maltese law and for the Courts of Justice to be able to enforce them. Malta became a member of the European Union on 1st May 2004 consequently; European Union Regulations have a direct effect and are directly applicable in Malta, whereas European Union Directives have to be transposed into national laws.

The Judiciary acts as the guardian of the rule of law and the Constitution ensuring that neither the Legislature nor the Executive abuses its powers as imposed by the Constitution itself. The highest court of the land is the constitutional court (that hears cases that constitute an alleged breach of the provisions of the constitution) followed by the superior courts of civil and criminal jurisdiction, which are in turn hierarchically superior to the inferior criminal and civil courts. There are also a number of administrative tribunals, which have the authority to settle matters of an administrative or a specific nature e.g., there is a tribunal for industrial disputes. There is no binding law of precedent under Maltese law although judgements are considered to be authoritative with respect to the interpretation of the law⁹.

There is no domestic law granting the right to consular protection however this is offered as a matter of practice and policy on the basis of respect for fundamental rights of the individual which are enshrined in the Maltese legal system, both in the Maltese Constitution and in ordinary laws.

There is no case law on the subject either.

Certain related legislation does, however, exist:

- Consular Conventions Act 1955, Cap 144 *Laws of Malta*

⁶ Information gained from a document reference to an internal questionnaire (MFA Questionnaire 2007), the full contents of which were not disclosed.

⁷ Although aspects of Maltese Company law and Shipping law are based on English Common law. The Maltese Courts however have no binding law of precedent.

⁸ Subsidiary legislation or secondary legislation cannot go beyond the *vires* (the parameters) of the enabling Act (i.e., the Act under which it is issued). Maltese Courts of Law have the authority to review subsidiary legislation and render it null and void if it is deemed to be *ultra vires* the parent Act. Subsidiary legislation is published rapidly and requires only Ministerial authorisation. This gives Ministers the flexibility to publish legislation as the need arises. Subsidiary legislation is the legal instrument that is mostly used to transpose the EU *acquis communautaire*.

⁹ Any natural or legal person has access to justice before the courts once the person proves a direct interest. It is only when the matter constitutes a breach of fundamental human rights and freedoms as entrenched in Chapter 4 of the Constitution that a person can initiate legal proceedings without needing to prove a direct interest.

- Consular Conventions (Application) Order 1956, Subsidiary Legislation 144.01
- Diplomatic Privileges and Immunities Act 1966, Cap 191 *Laws of Malta*
- Application of Part III of the Diplomatic Immunities and Privileges Act Order 1966, Subsidiary Legislation 191.01
- Refund of Value Added Tax in terms of Diplomatic and Consular Arrangements Regulations 1999, Subsidiary Legislation 406.06

There follows a brief overview of the main legislation relating to consular and diplomatic protection:

[Consular Conventions Act 1955, Cap 144 *Laws of Malta*¹⁰](#)

The long title of the Act states that the aim of this law is:

To confer upon the consular officers of foreign States with which consular conventions are concluded certain powers relating to the administration of the hereditary estate of deceased persons (Article 3); To confer on consular officers certain rights relating to deceased seamen and to wrecked ships (Article 8); To restrict the powers of the Police and other persons to enter the consular offices of such States (Article 5); To give consular officers certain other rights recognized by international law.

In this latter regard, although the Maltese law pre-dates the Convention (and is not the incorporating law of the Vienna Convention on Consular Relations, see below) consular officers are nevertheless granted rights recognised under International Law. Consular officers are granted immunity under Article 10 in that ‘a consular officer or employee shall not to be liable in proceedings in the courts, in respect of acts performed in his official capacity, falling within the functions of a consular officer unless his Government requests or assents to the proceedings through its diplomatic representative.’

[Diplomatic Privileges and Immunities Act 1966, Chapter 191 *Laws of Malta*¹¹](#)

Chapter 191 of the Laws of Malta, entitled Diplomatic Immunities and Privileges Act, provides for certain immunities and privileges of diplomatic and consular representatives, international organizations and their representatives as well as other persons. It also regulates purposes incidental to or connected with such matters. The Act is split into five Parts namely: Part I entitled Preliminary; Part II which establishes Diplomatic Immunities and Privileges; Part III which relates to privileges and immunities with respect to International Organizations and Persons Connected therewith; Part IV which refers to General Privileges and Immunities; Part V which contains Miscellaneous Provisions.

The Act also has two Schedules: the First Schedule incorporates a list of the substantive articles of the Vienna Convention on Diplomatic Relations as having the force of Law in Malta. The Second Schedule lists privileges and immunities for International Organizations and Persons connected therewith.

It is relevant to note that the Act defines the term ‘consular officer’ as ‘any person appointed as consul-general, consul, vice-consul or consular agent by a foreign State and holding a valid exequatur or other authorization to act in Malta in that capacity’. A ‘consular employee’ is defined as ‘any person, other than a consular officer, employed in the administrative or technical service of a consular post.’ In turn, a ‘consular post’ under Chapter 191 means ‘any consulate-general, consulate, vice- consulate or consular agency.’ The Act further stipulates that references in the Act to ‘consular officer’, ‘consular employees’ and ‘members of a consular post’ shall also include references to persons in the service of *any* Commonwealth country other than Malta, holding such offices or classes of offices. To fall within the scope of these definitions however, the Minister has to specify, by notice in the Government Gazette, these offices or classes of offices that involve the performance of duties substantially corresponding to those which,

¹⁰ Act XXXI of 1955, as amended by Emergency Ordinance XV of 1958; Ordinance XXV of 1962; Legal Notice 46 of 1965 and Act I of 1966.

¹¹ Act I of 1966, as amended by Acts XIV of 2000 and III of 2004.

in the case of a foreign State, would be performed by consular officers, consular employees and members of a consular post, respectively. The Minister may by virtue of Article 2(3) of Chapter 191, compile a list of Commonwealth countries for this purposes and must publish such list and any amendment to it, by notice in the Government Gazette. There is no similar provision that specifically applies to EU member States.

The Act lists in its First Schedule some¹² of the articles of the Vienna Convention on Diplomatic Relations and incorporates them by virtue of Article 3(1) of the Act, thereby giving these articles of the Convention 'the same force of law in Malta.'¹³ It also defines the terms used by the Convention in relation thereto.¹⁴ It is to be noted that the incorporation of the articles of the Vienna Convention listed in Schedule I to Act 191 is further qualified by Article 12 of the same Act. In sum, Article 12 gives discretion to the Minister to provide a lower level of privileges and immunities than those established under the Vienna Convention:

(1) If it appears to the Minister that the immunities and privileges accorded to a mission or consular post of Malta in the territory of any State, or to persons connected with that mission or consular post, are less than those conferred by or under the provisions of this Act on the mission or consular post of that State or on persons connected with that mission or consular post, the Minister may by order withdraw such of the immunities and privileges so conferred from the mission or consular post of that State or from such persons connected therewith as appears to the Minister to be proper.

(2) Nothing in this Act shall be construed as precluding the Minister from declining to accord immunities or privileges to, or withdrawing immunities or privileges from, nationals or representatives of any State on the ground that the State is failing to accord corresponding immunities or privileges to citizens or representatives of Malta."

With respect to privileges and immunities bestowed upon consular officers, Chapter 191 provides that the Minister may specify by order that he is exempting members of a consular post and members of their families from taxes, duties, rates, fees or other dues levied by the Government of Malta or a local authority. The Diplomatic Privileges and Immunities Act further specifies that the Minister, 'without in any way limiting the privileges and immunities conferred on consular officers and consular employees by the Consular Conventions Act¹⁵, and subject to the provisions of the present Act' shall not apply this exemption to any member of a consular post who is a citizen of Malta or is permanently resident in Malta and shall not affect any power to grant exemption as aforesaid under any other law.

Part III of the Act provides for privileges and immunities to be given to any organization, which the Minister may by order declare to be an organization of which Malta or the Government thereof and one or more other States or the government or governments thereof are members. This Part is also applicable to the European Investment Bank and to any organization, which the House of Representatives may by Resolution declare to be an organization with which Malta, or the government thereof, will be establishing or has already established a contractual relationship. The latter provision may permit the Minister to extend consular privileges and immunities applicable to Maltese citizens to be

¹² Schedule I includes Articles 1, 22-24 and 27-40 of the Vienna Convention.

¹³ This is required under the Ratification of Treaties Act, Chapter 304 of the Laws of Malta which establishes under its Article 3(3), "No provision of a treaty shall become, or be enforceable as part of the law of Malta except by or under an Act of Parliament".

¹⁴ In those Articles "agents of the receiving State" shall be construed as including any member of the Malta Police Force and any person exercising a power of entry to any premises under any law; "the receiving State" shall be construed as meaning Malta; "national of the receiving State" shall be construed as meaning citizen of Malta.'

¹⁵ Chapter 144 Laws of Malta.

also exercised vis-à-vis any nationals of EU member States. An order made under this Article may, notwithstanding any provision of any written law, including this Act, confer on any organization or person any immunities or privileges which are required to be conferred on that organization or person in order to give effect to any international agreement in that behalf but shall not confer any immunities or privileges greater in extent than those so required as aforesaid or confer any immunity or privilege upon any person as the representative of the Government of Malta or as a member of the staff of such a representative.

In Part IV, the Minister is obligated to compile a list of the persons, which appear to him to be entitled to immunities or privileges by or under the provisions of this Act¹⁶ and he shall from time to time amend the list and shall cause the list and any amendment of such list or amended list to be published in the Government Gazette. Article 9 in this Part establishes a very important premise relating to evidence. If in any proceedings any question arises whether or not any person or any organization is entitled to immunities or privileges by or under the provisions of this Act, a certificate issued by or under the authority of the Minister stating any fact relevant to that question shall be conclusive evidence of that fact.

Article 10 regulates the waiver of privileges and immunities granted under the Act. A consular officer or any person for the time being performing the functions of a consular officer may waive any immunity or privilege conferred under the provisions of this Act on him or on another member of the consular post of which for the time being he is in charge and such waiver shall be express and shall be communicated to the Government of Malta in writing. Any immunity or privilege conferred under the provisions of articles of the Act, may be waived in such manner as may be prescribed by the Minister in the relative order or notice.

With respect to exemptions from taxes and duties, any article which is imported or taken out of bond without payment of customs duty in pursuance of any immunity or privilege conferred by or under the provisions of this Act shall not be sold or otherwise disposed of to a person who is not entitled to the like immunity or privilege except with the consent of the Comptroller of Customs and upon the payment to him of customs duty thereon at the rate required according to the law relating to the payment of customs duty. Any exemption from customs duty granted to any person by or under this Act shall not be construed as exempting that person from compliance with the formalities in respect of the importation of goods which are prescribed in any law relating to customs or the importation of goods. Any exemption from taxes, duties, rates, fees or other dues to which this Act relates shall be subject to compliance with such conditions as the Minister responsible for finance or any public officer delegated by him in that behalf may prescribe for the protection of the revenue.

Malta also has a number of directives, based on the Immigration Act, which deal with visa issues. The existing directives require further elaboration according to the Common Consular Instructions and its annexes¹⁷. Furthermore, the Central Visa Unit has the task of ensuring that ‘the application of the “Common Consular Instructions on Visas” is properly applied in all of Malta’s diplomatic missions and consular posts.’¹⁸

Malta also has the following Representation Agreements:

- Representation Agreement with Austria signed 7 May 2004
- Representation Agreement with Italy signed 27 October 2005

¹⁶ Exceptions are: children under the age of eighteen years of a person so entitled and any person whose name appears on a list published under Article 7 of this Act. Article 7 refers to the temporary grant of privileges and immunities to persons attending International conferences in Malta.

¹⁷ Note in this regard, the reference to ‘Common Consular Instructions on visas for the diplomatic missions and consular posts of the Contracting Parties to the Schengen Convention’ issued by the EU; ref: Immigration Act, Chapter 217, Legal Notice 205.2005

¹⁸ Reference Link: <http://www.foreign.gov.mt/default.aspx?MLEV=2&MDIS=16>

- Representation Memorandum of Understanding with Spain signed 17 January 2008
- Representation Memorandum of Understanding with France signed April 2009

Malta is also part of the Schengen area. Thus, diplomatic missions issue Schengen visas and there are arrangements with Italy and Austria for these States' diplomatic representations to issue Schengen visas on Malta's behalf in third countries where Malta does not have a representation.

Insofar as dual citizenship is concerned, since 10 February 2000, Maltese citizens can have dual citizenship.¹⁹

2.5. Documentation of consular protection

No national compilation on practice in international law exists within the Maltese system.

2.6. Information to citizens on consular protection

On the back cover of all new (biometric) passports issued by the Malta Passports Office Article 23 TFEU is reproduced.

Malta has also published explanations on the rights deriving from Article 20 in an extensive Travel Manual for Maltese nationals on the Ministry of Foreign Affairs website, available on line²⁰.

Moreover, the Maltese government has distributed the [European Consular Assistance Brochure compiled by the General Secretariat of the Council of the European Union](#).

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual Framework

Malta's agreements with third countries do not include provisions protecting Union citizens working and living in third countries.

Malta has not informed third countries of the practice of extending protection to Union citizens (Art 8 Vienna Convention on Consular Protection).

Malta's agreements with third countries do not include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State, however, this is generally carried out in practice.

In general, Malta does extend consular protection to Union citizens' family members who are not nationals of a Member State by State practice.

Malta has not informed third countries of this practice; it is *ad hoc* and there is no *a priori* notification.

¹⁹ Ref: Constitution, The Malta Independence Order, 1964, as amended by Acts: XLI of 1965, XXXVII of 1966, IX of 1967, XXVI of 1970, XLVII of 1972, LVII, LVIII of 1974, XXXVIII of 1976, X of 1977, XXIX of 1979, IV of 1987, XXIII of 1989; Proclamations Nos. II and VI of 1990; Acts XIX of 1991, IX of 1994; Proclamations IV of 1995 and III of 1996; Acts: XI of 1996, XVI of 1997, III of 2000, XIII of 2001, V of 2003, and XIV and XXI of 2007; Maltese Citizenship Act 1964, Chapter 188 *Laws of Malta* (Act XXX of 1965, as amended by Acts: II of 1970, XXXI of 1972, LVIII of 1974, XXXI of 1975, IX of 1977, XIII of 1983, XXIV of 1989 and IV of 2000).

²⁰ <http://www.foreign.gov.mt/Library/Travel%20manual/TRAVELBOOK-PAGESENGLISH-PROOF11.pdf>.

Malta has not started negotiations concerning agreements with third countries including provisions protecting Union citizens working and living in third countries.

Malta has not started negotiations concerning agreements with third countries that include provisions extending consular protection to union citizens' family members who are not nationals of a Member State

3.2. Statistical data on consular practice

There are no centralised statistical data available on the number of cases of consular protection offered in third countries over the last 3 years, including protection provided to unrepresented EU citizens. Day-to-day operations are not accounted for; only the more serious cases are recorded. **It has been reported that zero cases of assistance to unrepresented EU nationals were reported by Maltese consular and diplomatic representations for the years 2000, 2003 and 2005.** During these same years, only a small number of Maltese citizens received consular protection from other EU embassies or consulates.²¹

Regarding whether Malta has provided assistance to Union citizens, no record is kept.

Except for legalizations/notarizations (averaging 19000 per year), no statistics were forwarded.

4. Consular protection in detail

As mentioned above, **consular protection is practised as a matter of policy and no specific legal right exists within the domestic legal system of Malta.**

The practice/policy followed is laid out in the website of the Malta Foreign Affairs Ministry²².

The information on this website in the section on 'general consular assistance' focuses on consular services offered to Maltese citizens while abroad, ranging from medical assistance, cases of arrest and detention of Maltese nationals while abroad and assistance to victims of crime and loss or theft of travel documents. The assistance offered by the **Directorate of Protocol and Consular Services (PCSD)** also includes emergency and crisis situations.

CONSULAR SERVICES

General consular assistance

Malta provides general consular services via its diplomatic missions. In fact the PCSD, offers to Maltese citizens in distress in foreign countries. This Directorate, does so with the invaluable assistance of diplomatic staff serving abroad, providing a broad array of services to Maltese individuals, ranging from medical assistance, victims of crime, and loss or theft of travel documents.

In such situations, PCSD acts as the point of contact between the individual who is abroad and his family at home, facilitates financial transactions when needed, and in countries where Malta has a diplomatic presence, ensures that Maltese diplomatic agents, whenever possible, visit and assist the person in distress. The Directorate also helps in searching for Maltese citizens reported missing while abroad or provides information to his family who seeks information in this regard.

Malta also has a number of non career consuls²³. Where there is no diplomatic mission these consuls, whose usual role is to facilitate friendship and trade between with Malta and the host country, are also engaged to assist the PCSD in matters referred to above.

²¹ Information gained from a document reference to an internal questionnaire (MFA Questionnaire 2007), the full contents of which were not disclosed.

²² <http://www.foreign.gov.mt/default.aspx?MDIS=1&MLEV=1>

Arrest or detention while abroad

Whenever a Maltese national is arrested or sentenced by a foreign court, the Ministry of Foreign Affairs (MFA) acts as the means of communication between the detained individual and his family in Malta, and tries to ensure that the convicted citizen has access to adequate legal representation in a language that he or she understands.

Emergency or crisis situations

Whenever a country or region is affected by an emergency or crisis situation, such as a natural disaster or terrorist attack, PCSD serves as the point of contact between Maltese nationals who may get caught in the crisis and their concerned families at home. In such cases, MFA sets up an *ad hoc* Emergency Crisis Centre, equipped with emergency telephone lines to address the public's queries. The Directorate also maintains constant communication, through its Embassies, High Commissions and Consulates, with the local authorities where the crisis occurred and also with other EU Member States.

Visa applications and travel advice

PCSD assists Maltese nationals to obtain an entry visa to countries which require it. The Directorate also provides general information regarding other countries' visa requirements to Maltese citizens. We also provide travel advice to Maltese nationals who may need to travel to countries where the political situation or otherwise may be of danger to them.

Adoptions

This Directorate assists Maltese couples who are planning to adopt foreign children. Before these children are issued with a visa enabling them to enter Malta, the MFA scrutinises all documents to ensure that both local and foreign legal obligations are correctly observed.

Legalisations

PCSD has a legalisation unit which issues so-called Apostilles or Legalisations. Apostilles and legalisations are authorised endorsements of public or commercial documents that are officially recognised by both the country of issue and the country in which they are to be used.

Scholarships

Local and foreign governments offer a number of scholarships for Maltese citizens who may wish to follow up their studies abroad. Following an official notification of an offered scholarship, PCSD issues a press release, distributes and receives applications from interested parties, and coordinates interviews, where necessary. We also offer practical guidance to successful candidates.

Rogatory letters

Every legal process that involves Maltese and foreign jurisdictions, seeks PCSD's assistance, which through its network of Embassies and Consulates abroad, serves as the main point of contact between the juridical authorities of the countries concerned.

Illegal Immigration

This Directorate ensures that humanitarian protection and refugee status are accorded to those unfortunate immigrants who really need and are honestly entitled to it. Repatriation is a complex process that requires constant cooperation with the countries of origin. PCSD, in liaison with Maltese Embassies, Consulates and the Immigration Police, establishes the true identity and nationality of illegal immigrants, and in cases where these do not qualify for refugee status, provides for their repatriation.

Relevant International Conventions must be incorporated into the Maltese domestic system since Malta follows the dualist school.

Article 23 TFEU is directly applicable within the Maltese legal system.

No cases on consular protection were found.

²³ See list on <http://www.foreign.gov.mt/default.aspx?MDIS=18>

4.1. General

It has been reported that the consular officers of Malta are required to provide consular protection to Maltese nationals in cases of loss or theft of travel documents, in cases where repatriation is necessary, where a citizen dies abroad or suffers a serious accidents or illness and in cases where assistance is required by nationals who have been arrested or detained. This includes safeguarding the life, rights, interests and property of Maltese citizens within the territory of a foreign State. **Such protection cannot be demanded as a matter of right, but is a privilege which may be withheld at the discretion of the Minister of Foreign Affairs.**

Malta implicitly recognises that every national, refugee and stateless person has a right to consular protection and, through the application of reciprocal arrangements, does not distinguish between residents, relatives and foreigners.

4.2. Assistance in cases of death

In such cases, on being informed of a Maltese citizen's death abroad, a diplomatic official or consul contacts the Protocol Directorate and Consular Services within the Malta Ministry of Foreign Affairs in order for the relatives of the deceased to be contacted as soon as possible.

Consular and embassy officials assist with logistical needs that arise when a Maltese citizen dies abroad. Officials can assist in obtaining death certificates and other documents from local authorities, and also get the next-of-kin into contact with a local undertaker who either makes the necessary arrangements for burial of the deceased locally, or else for transportation of the corpse back to Malta.

While the Ministry's officials do their utmost to fulfil the wishes of those concerned with regard to funeral arrangements, and are ready to serve as liaison between the relatives of the deceased, and the authorities and the local undertakers, it may not always be possible to satisfy all the requests due to certain local regulations and so forth.

The Ministry of Foreign Affairs does not cover repatriation costs. It is not possible to provide funds for the funeral, nor to bring relatives of the deceased to the place where death has occurred, or to accompany the corpse back to Malta.

4.2.1. Identifying and repatriating remains

Apart from the above, which is also relevant, with regard to the Maltese practice concerning the repatriation of corpses, it should be noted that Malta has not ratified the 1973 Strasbourg Convention on the Transfer of Corpses nor the 1937 Berlin Agreement concerning the Conveyance of Corpses.

Malta has no set practice of repatriation of corpses and no repatriation agreements. Repatriations of human remains are carried out according to International Regulations and under the supervision of Port Health Authorities. The remains are required to be contained in a soldered inner coffin of lead or zinc (if relatives want to view the corpse ideally a glass window is to be provided in the inner lining), which in its turn must be packed in a wooden coffin. The latter is again packed, to protect from damage, in a case and/or may be covered up by a canvas or tarpaulin so that the contents are not visible.

The following documents must accompany the remains:

- Certificate of death
- Certificate of identity

- Certificate of embalmment
- Burial Permit issued by the Police Authority
- Document issued by the health authority concerned certifying that human remains may be safely transported without danger to risk to public health.

According to local practice, all original documents are placed in a sealed envelope and handed to the Flight Captain (if transportation is by air) or the Ship Master (if transportation is by sea). A set of copies of the original documents is affixed to the outer covering of the packaging. Port Health Services are to be notified prior to the date of arrival of the human remains in Malta.

4.3. Assistance in cases of serious accident or serious illness

In these cases consular officers can offer various means of assistance such as: suggest where local English-speaking doctors are to be found and where to find medical facilities; help to correspond with the local insurance agency or with medical evacuation; contact one's relatives and friends in Malta; communicate with health officials in case of difficulty; facilitate money transfers from relatives or friends in Malta should the need arise; conduct hospital visits (such visits usually occur in cases of serious illness and if the patient is travelling alone; it also depends on the distance between the embassy or consulate and the relevant hospital).

Maltese embassies, consulates and consuls do not provide financial aid such as paying hospital bills or other medical expenses.

4.4. Assistance in cases of arrest or detention

In such cases, the Ministry for Foreign Affairs acts as a liaison between the detained individual and his family in Malta, and endeavours to ensure that the arrested or detained citizen has access to adequate legal representation in a language that he or she understands. The support provided is restricted to an explanation of the legal system and local customs. It does not extend to the provision of legal advice on the individual case. The consulate can provide the arrested or detained individuals with a list of local lawyers and will aim to ensure that he is treated fairly.

Malta is a Party to the Council of Europe Convention on the Transfer of Sentenced Persons (1983)²⁴.

4.5. Assistance to victims of violent crime

If possible, officials will visit the person concerned in hospital or jail. Although the Ministry cannot offer legal or medical assistance, or recommend or disburse lawyers or doctor's bills, it can and does advise the victim on local lawyers and doctors, assist him with police matters and endeavours to put him through to his local insurance agency. If requested, Maltese missions can also put the victim into contact with friends and relatives and help him to travel back to Malta.

Malta is not a Party to the 1983 European Convention on the Compensation of Victims of Violent Crimes.²⁵

²⁴ Strasbourg, 21 March 1983, ETS No. 112. Malta signed the Convention on 4 November 1988 and ratified it on 26 March 1991. It came into force with respect to Malta on 1 July 1991.

²⁵ Strasbourg, 24 November 1983, ETS No. 116.

4.6. Relief and repatriation of distressed citizens

Maltese diplomatic and consular missions do offer assistance should it be required. However, due to the limited number of embassies and consular representatives Malta has abroad, in case of Natural Disasters, Terrorist Acts, Pandemics and Military conflicts assistance is very limited. Similarly, owing these logistical restraints due to its size, **Malta does not act as a Lead State** but rather, facilitates assistance by Lead States.

In relation to the cooperation between the Member States in times of crisis, whenever a country or region is affected by an emergency or crisis situation (such as a natural disaster or terrorist attack) the Protocol and Consular Services Directorate serves as a liaison between Maltese nationals affected by the crisis and their families at home. In such cases, the Ministry for Foreign Affairs sets up an *ad hoc* Emergency Crisis Centre, equipped with emergency telephone lines to address the public's queries. The Directorate also maintains constant communication, through its Embassies, High Commissions and Consulates, with the local authorities where the crisis has occurred, as well as with other EU Member States.

Regarding the **pooling of resources** with other Member States, on 9 December 2008, Cyprus and Malta entered into an agreement for joint premises of their diplomatic missions in Tel Aviv (Israel) and Ramallah (PNA – Palestinian Territories). Malta also has a co-location agreement with Austria in Moscow (Russia).

4.6.1. Financial Advances

Concerning financial advances (made under Art. 6 of Decision 95/553/EC), the general rule is that no financial assistance is provided by the Consulate. Thus, the next-of-kin may deposit an equal amount of money necessary to offset costs in any of Malta's diplomatic missions or Head Office in advance. The recipient Malta Mission will inform the Malta Mission dealing with the case that the money has been deposited or that a guarantee by the next-of-kin has been submitted.

4.7. Reimbursement of the assisting State

Any expense incurred by the Diplomatic Mission in order to provide assistance is subject to reimbursement. In principle, there are no direct fees with regard to consular protection. However, administrative consular services and the issuing of passports are subject to fees²⁶.

According to the authorities concerned the situation has never arisen where States offering consular assistance to Maltese citizens have made reimbursement claims to the Maltese authorities themselves but it is understood that reimbursement claims by these States have been made directly to the Maltese citizens to whom they have offered consular assistance,

5. Emergency travel document (ETD)

Maltese citizens who lose their Maltese passport may apply for an Emergency Travel Document which is valid for one trip during 24 hours maximum. In order to apply for an emergency passport, applicants must personally submit a police report proving the loss of their Maltese passport, as well as prove their identity (ideally have a copy of their passport) and Maltese citizenship. If there is no Maltese representation in

²⁶ Fees are prescribed in the following website: <http://www.passaporti.gov.mt/Home.aspx?lid=1>

the State where they lost their passport they can ask assistance in an EU Member State representation who will then contact the Maltese passport office giving the relevant data referred to above.

Maltese missions are not authorized to issue new passports themselves. Therefore, consular representatives or diplomatic missions do not issue ETDs; they are issued by the Passport Office. Maltese missions process applications for passports, which are forwarded to the Passport Office and the new Passports are returned through the same channel. The same applies to ETDs.

During the time of drafting of this Report new regulations are being drafted that may affect this current rule.

6. Relevant diplomatic protection

In Malta, no legal right to diplomatic protection exists. As with consular protection, this is offered on the basis of administrative practice as it is deemed relevant.

7. Summary

While Article 23 TFEU is directly applicable in Maltese law, the legal right to consular protection does not otherwise exist in a specific domestic law. This is based on consular practice along the lines outlined in this Report.

Malta is Party to the main international conventions in this area, however, its bilateral agreements are few.

8. List of important documents

Primary Legislation

1.

Cap 144 Consular Conventions Act 1955, Chapter 144 *Laws of Malta*

2.

Cap 191 Diplomatic Privileges and Immunities Act 1966, Chapter 191 *Laws of Malta*

3.

Cap 443 Legal Procedures (Ratification of Conventions Act), 2006, Chapter 443 *Laws of Malta*.

Subsidiary Legislation

4.

S.L. 144.01 Consular Conventions (Application) Order 1956, Subsidiary Legislation 144.01

5.

S.L. 191.01 Application of Part III of the Diplomatic Immunities and Privileges Act Order 1966, Subsidiary Legislation 191.01

6.

S.L. 406.06 Refund of Value Added Tax in terms of Diplomatic and Consular Arrangements Regulations 1999, Subsidiary Legislation 406.06

International Representation Agreements with Other States

7.

Representation Agreement with Austria signed 7 May 2004

8.

Representation Agreement with Italy signed 27 October 2005

9.

Representation MoU with Spain signed 17 January 2008

10.

Representation MoU with France signed April 2009



Poland - Polska (PL)

1. Introduction

This Report contains the analysis of Polish law and practice in the field of consular relations, and especially the implementation of the European consular protection based on Article 23 TFEU and Article 46 of the Charter of Fundamental Rights of the European Union.

The basis of the report are Polish legislation, multilateral and bilateral agreements concluded by Poland, EU law, limited Polish case-law, the information obtained from the Ministry of Foreign Affairs of the Republic of Poland including some internal documents, as well as a representative doctrine in International Law (both Public and Private), EU Law and national law.

2. Legal framework

The Polish legal framework is based on the **1997 Constitution** that – as far as the current Report is concerned – **provides basic regulation on the protection of Polish citizens while they are abroad**. It also determines the sources of domestic law and the implementation of international law and EU law into domestic legal order.

2.1. International law

The Vienna Convention on Consular Relations is the most important multilateral agreement related to consular relations that Poland is a Party to. It was ratified by Poland on 17 September 1981 and entered into force on 12 November 1981. No reservations were made by Poland to the Convention. The Convention was published in the Official Journal of the Republic of Poland¹. Poland has not acceded to the Optional Protocols.

Poland is a party to the European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers of 7 June 1968 (CETS No. 63). It was ratified on 11 January 1995 and entered into force in respect to Poland on 12 April 1995. No reservations were made. The practical significance of that convention is minimal since Polish law requires authentication (legalisation) of documents in only very few cases: transfer of immovable property located in the territory of Poland and documents whose authenticity has been called into question². Other international documents, e.g., the 1961 Hague Convention³, generally abolish the requirement of legalisation for foreign public documents. As a side effect, consular officers are excluded from the documents authentication process.

¹ Official Journal of 1982, No. 13, Item 98.

² See Art. 1138, *1964 Code of Civil Procedure*.

³ *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*, UNTS vol. 527, No. 7625, p. 189-203). Poland ratified this convention in 2005 (O.J. 2005, No. 112, Item 938).

Poland is not a party to the (Council of Europe) Agreement on the Transfer of Corpses of 26 October 1973, neither to the (League of Nations) Berlin Arrangement concerning the conveyance of corpses of 10 February 1937.

Poland has concluded numerous **bilateral conventions on consular relations**. Currently, 40 such conventions remain in force [see [Section 9](#)]. In addition, Poland concluded also some 40 bilateral agreements on legal aid which provide for various consular activities in this field (mostly in civil matters).

The bilateral consular conventions are drafted quite schematically, apart from limited exceptions, e.g., the conventions with UK or USA which are more original in their content. In general, the conventions cover all aspects of consular activities: establishment, functions, privileges and immunities. Some of them provide for the possibility of Polish consul to act *in favorem tertii*, such stipulations reflect Article 8 of the 1963 Vienna Convention of Consular Relations.

Agreements on legal aid, alike schematic as to their structure and content, provide for solutions that facilitate conduct of legal transactions by eliminating the involvement of consuls, e.g., by abolishing consular legalization (authentication) of documents and ensure direct applicability of foreign official documents originating in the states-parties to such agreements. Some 20 of these agreements, concluded mostly with the countries of Central and Eastern Europe, indicate the *lex rei sitae* principle (competence of the law of the place where the object is situated) with regard to the form of foreign acts related to immovable property (real estate). This solution raises some practical problems in conduct of legal transactions since foreign civil servants and notaries are often not aware that the Polish Civil Code provides that if a main legal act is to be performed in a special form (e.g., notarial deed form for transfer of real estate) the proxy to perform that legal act also requires this special form.⁴ Other agreements on legal aid do not generate similar problems just as legal transactions based solely on Polish law (when there is no such agreement).⁵

In addition, the agreements on legal aid refer to transfer of official documents and civil status records (vital records) between State bodies, taking evidence abroad, service of documents, sending request for legal aid. In this context, consular activity may be substantial as consular officers may be involved in either performing legal acts or intermediating in their performance. Some provisions of agreements concluded with EU countries, for example related to mutual recognition of judgments in civil matters, are not applied any longer due to distinct regulation of these issues by EU legislation.

The Polish law contains specific references to a number of consular activities of Polish consuls as well as consular and diplomatic privileges and immunities of foreign representatives. In theory, these regulations should not be used if an international agreement concluded by Poland provides otherwise. In practice however, despite a number of consular conventions and agreements on legal aid concluded by Poland, public authorities and courts rarely invoke the provisions of international agreements directly relying more on domestic law in the first place. This situation has been improving in the recent years on account of Supreme Court's case law that pays more and more attention to collision rules embodied in international agreements.

2.2. Transposition of International Law into national law

In accordance with the 1997 Polish Constitution, ratified international agreements are generally transferred into the Polish legal system and are regarded as a source

⁴ Art. 99.1 *Civil Code*.

⁵ In accordance with Polish private international law the form of a legal transaction is governed by *lex cause principle* or *lex loci actus principle*, see Art. 12 *Act on Private International Law*.

of universally binding law of the Republic of Poland⁶. In addition, after their promulgation in the Official Journal (*Dziennik Ustaw Rzeczypospolitej Polskiej*), ratified international agreements constitute part of Polish legal system and can be applied directly insofar as their application does not require a specific piece of legislation to be adopted⁷.

As far as other sources of international law are concerned, the Constitution although does not remain silent on the issue, it does not however provide for any clear and explicit mechanism. The Constitution stipulates only in a general manner that *'the Republic of Poland shall respect international law binding upon it.'*⁸ This provision is interpreted as both allowing for a direct application of international custom as well as imposing an obligation to observe and implement in the national system the international agreements concluded without ratification (by approval, signature, exchange of notes, etc.).⁹

As far as the position of international law in the hierarchy of legal sources in the Polish legal system is concerned, the Constitution, in a precise way, regulates only the position of international agreements which were ratified upon prior consent of the Parliament, that is, after the Parliament in the form of an act (statute) authorized the President to ratify the agreement. Such international agreements take precedence in the case of a conflict with the law of statutory rank (*ustawy*, acts)¹⁰.

2.3. Implementation of European Law in national law

The 1997 Constitution provides that the Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters¹¹. As far as the position of EU secondary law is concerned the Polish Constitution stipulates that if an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws¹².

As far as the specific EU legislation on European consular protection is concerned it need to be pointed out that, in general, Polish law corresponds to EU law in that it allows both Polish consuls to act *in favorem tertii* (to the benefit of non-citizens) and foreign consuls to act to the benefit of Polish nationals¹³, and at the time of Poland's accession to the Union there was no specific need for any adaptation of Polish law in this context. Also, a number of bilateral conventions concluded by Poland allow for consular activities *in favorem tertii* in a manner similar to Art. 8 of the 1963 Vienna Convention.

As the Ministry of Foreign Affairs reports, after the Polish accession to the European Union all Polish consular posts were informed of the need to apply the then Art. 20 TEC (current Art. 23 TFEU). It should be underlined that the Ministry has reminded the consular officers about European consular protection on a number of

⁶ See Art. 87.1 *Constitution*.

⁷ See Art. 91.1 *Constitution*.

⁸ See Art. 9 *Constitution*.

⁹ On this issue see *inter alia*, W. Czapliński, A. Wyrozumska, *Prawo międzynarodowe publiczne. Zagadnienia systemowe*, 2nd ed., Warszawa 2004, p. 523 and 562.

¹⁰ See Art. 91.2 *Constitution*.

¹¹ See Art. 90.1 *Constitution*.

¹² See Art. 91.3 *Constitution*.

¹³ See Art. 6, 1984 *Act on the Functions of Consuls*.

occasions; most recently in the ministerial Instructions on awarding consular assistance in emergency situations¹⁴.

Nonetheless, it must be admitted that Polish law lacks an explicit stipulation of European consular protection. Though there are doubts whether Art. 23 TFEU has direct effect, e.g., there is no ECJ case law on the issue so far, Poland recognized Decision 95/553/EC as international agreement concluded in the simplified form, that is without ratification or approval, and the norms embodied in the Decision as self-executing ones. However, **the practice of application of Art. 23 TFEU has not so far been corroborated by any detailed internal rules or ministerial instructions.**

Polish legislation does not explicitly provide for the protection of non-Polish spouses of Polish nationals, and by extension, of non-EU spouses of EU citizens. Equally, Polish law does not contain legislation on consular protection of non-nationals who have however been granted international protection in the territory of Poland (mainly in the form of either refugee status, subsidiary protection or tolerated stay).

As far as **implementation of the Decision 96/409/CFSP** on the emergency travel document is concerned Art. 23.1, Act of the Functions of Consuls, clearly states that the consul may issue travel documents to foreign nationals and grant entry visas to other countries. This provision allows to issue documents for European citizens within the European consular protection exercised by Polish consuls, as well as provides the basis for Polish consuls acting within the European visa representation.

2.4. National law

Poland has quite thorough legislation on the foreign service and especially on consular activities.

The basic right of Polish citizens to protection by Polish authorities during a stay abroad is embodied in the Constitution of 1997¹⁵. This provision creates an entitlement of Polish citizens to protection, and at the same time, an obligation of State authorities to protect them. The entitlement includes the right to take a decision on whether to exercise or not to exercise that entitlement in a distress situation.

In 2001, Poland issued the **Act on the Foreign Service¹⁶** that regulates *inter alia* the composition, organization and functioning of Polish foreign service as a single service that includes diplomatic and consular staff together (before that the foreign service was deemed to include two separate branches: diplomatic service and consular service.) The 2001 Act determines rights and obligations of members of the foreign service in employment relations with the State. The Act does not touch upon the merits of the protection of citizens.

¹⁴ *Instructions concerning the principles of awarding Polish citizens consular assistance in emergency situations*, an Annex to the internal order No. 13 of the Director General of Foreign Service (*zarządzenie Dyrektora Generalnego Służby Zagranicznej*) issued on 12 May 2010, Section IV.6: *Cooperation with consular posts of states of the European Union*. It is worth mentioning that the *Instructions* replaced a previous internal document on the issue, *Claris No. 2507* of 24 December 2008 issued by Consular Department of MFA that itself also reminded about the European consular protection (Section I.9).

¹⁵ Art. 36 Constitution reads: *A Polish citizen shall, during a stay abroad, have the right to protection by the Polish State.*

¹⁶ *Act on Foreign Service (Ustawa o służbie zagranicznej)* of 27 July 2001, Official Journal of 2001, No. 128, Item 1403 with subsequent amendments.

The most comprehensive regulations are embodied in the 1984 Act on the Functions of Consuls of the Republic of Poland¹⁷. It is probably more complex than most consular legislation in other European states. Articles 10-32a of the Act specify methods and mechanisms for carrying out a number of consular tasks. In particular, Articles 10 and 11 constitute the general mechanisms to protect the rights and interests of Poland and provide assistance to Polish citizens. Consular officers should provide consular protection to individuals considering their rights to which they are entitled by both international law and the domestic law of the receiving State (Art. 11). The 1984 Act describes in a fairly detailed manner the tasks of Polish consuls in various situations in which they are called upon to act, including the representation at court and authorities of the hosting State (Art. 12), arrest and detention (Art. 13), custody and wardship (Art. 14), financial assistance (Art. 16), accepting deposit of documents, currency, objects of value (Art. 17), servicing documents and collecting testimonies, transmitting requests for legal aid (Art. 18), notary deeds (Art. 19), translations (Art. 20), legalization of official documents (Art. 21), issuing passports, other travel documents and visas (Art. 23), acts related to Polish citizenship (Art. 25) and Pole's Card (*Karta Polaka*, Art. 25a), civil status records (Art. 26). It should be noted that these provisions require consuls to apply other legislative acts accordingly, e.g., Act on Notarial Law (*Prawo o notariacie*), Law on Civil Law Acts (*Prawo o aktach stanu cywilnego*), etc.

In the context of the European consular protection it is of special importance to note Art. 13 of the Act that provides the modalities of how the consuls are to ensure legal protection to the citizens deprived of their liberty (arrested, detained, etc.). In this respect, consuls may address courts and other authorities of the host country, visit the detained, provide them with relevant information, facilitate contacts with family members and other relatives.

It might be of interest to note that the notion of “consul” is not coherent in various Polish legislative acts. 1984 Act on the Functions of Consuls defines the consul in a manner consistent with traditional public international law concepts as the head of a consular post (see Art. 1). Other officers who possess diplomatic or consular rank perform consular activities on the basis of the authorization of the head of consulate (Art. 4). On the other hand, the 2001 Act on the Foreign Service describes all persons authorized to perform consular functions as consuls. Other national laws providing for the activities of consuls (including the Law on Civil Status Acts, the Family and Guardianship Code, the Code of Civil Procedure, etc.) do not define consular officers, neither they refer to any specific definition from another piece of legislation. In practice, these inconsistencies do not have any impact on the performance of their functions by Polish consuls. Moreover, certain acts of the Polish law specifically address the scope of privileges and immunities of foreign consular officers (e.g., Code of Criminal Procedure, Code of Civil Procedure) or regulate their contacts with foreigners deprived of liberty (e.g., Code of Criminal Procedure, the Act on granting protection in the territory of Poland) without defining the concept of the consul, either. However, this does not lead to practical difficulties.

Polish Ministry of Foreign Affairs has launched the process of preparing a major amendment to the 1984 Act on the Functions of Consuls. It appears, however, to be at an early stage and does not seem to be a dynamic process. So far only the Draft Assumptions for the proposed amendment were prepared and published in October

¹⁷ *Act on the Functions of Consuls of the Republic of Poland (Ustawa o funkcjach konsułów Rzeczypospolitej Polskiej)* of 13 February 1984, uniform text published in Official Journal of 2002, No. 215, Item 1823 with subsequent amendments.

2009 on the MFA website¹⁸. Soon after, another document called Assumptions was prepared and published on MFA website in late February 2010¹⁹. The Ministry declares that the Assumptions for amendments are currently under consultation with the Governmental Legislation Centre (*Rządowe Centrum Legislacyjne*).

The novelization process has been definitely driven by awareness of the need to adjust the existing consular legislation both to the developments within Polish domestic legal system (conduct of legal transactions, rules on entry and exit of foreigners, Pole's Card, passports, visas, electoral law, etc.)²⁰, developments on EU level (European consular protection)²¹, and global developments (emergency situations, evacuations in distress situations, etc.). The expected novelization of Polish Consular Law is also perceived as essential on account of requirements of more principal character – the need to adapt the Law to the standards designated by the Polish Constitution, under which the provisions on procedures before a body that is to determine matters relating directly to the citizens need, should be laid down in statutory law, that is, in acts adopted by the Parliament. Currently, the consular law does not meet that requirement, since it does not include provisions on proceedings before consuls and delegate them to lower level implementation measures²².

2.5. Documentation of consular protection

The MFA does not account for every single action taken by consular officers. The primary source on number and type of consular activities are the **annual Reports drafted by consular posts at the beginning of every year**. The Reports provide numbers of legal acts taken, of passport and visa activities as well as of consular protection rendered, including the number of Polish citizens detained in the reporting year, the number of consuls' decisions to grant financial assistance, the number of deaths and an estimated number of interventions in defence of the rights and interests of Polish citizens. Detailed records are kept for so-called registered consular activities, these are: passport, visa and legal activities that are subject to a fee. Unregistered activities, e.g., interventions for Polish citizens, are recorded in the form of memos and notes. A number of unregistered activities is not reported at all since the Ministry believes that there is no such need.

So far, there exists no compilation on consular practice that could be used as a guide for consular officers in their daily work.

2.6. Information to citizens on consular protection

Comprehensive information on consular protection is provided on the website of the Ministry of Foreign Affairs in the Section: 'Consular information' (*Informacje*

¹⁸ *Założenia do projektu nowelizacji ustawy z dnia 13 lutego 1984 r. o funkcjach konsułów Rzeczypospolitej Polskiej*,

http://www.msz.gov.pl/files/BIP/akty_prawne/zalozenia%20do%20ustaw/zalozeniakonsularne_uzgodnie_nia.doc (published on 19 October 2009).

¹⁹ *Założenia do projektu ustawy o funkcjach konsułów Rzeczypospolitej Polskiej*, http://bip.msz.gov.pl/files/BIP/akty_prawne/zalozenia%20do%20ustaw/Projekt%20zalozen_funkcje%20konsulow.doc.doc (most recent version of 24 February 2010).

²⁰ See *Założenia do projektu ustawy ...*, *op. cit.*, p. 1.

²¹ Draft Assumptions specifically provide for the adaption of Consular Law to the EU law by introducing an explicit possibility of a consul to act in favour of the citizens of another EU Member State, zob. *Założenia do projektu nowelizacji ...*, *op. cit.*, p. 7-8.

²² See *Założenia do nowelizacji ustawy o funkcjach konsułów Rzeczypospolitej Polskiej*, p. 3.

konsularne). It contains a detailed guide ‘A Pole abroad’ (“*Polak za granicą*”)²³, addresses of Polish missions, information on authentication of documents, passport and visa information as well as information on customs and taxes. In addition, the website provides information on Schengen Area and information for people planning to reestablish themselves in Poland. Besides, some travel warnings appear on the website on a regular basis. **Information on consular assistance abroad are published also on individual websites of a number of Polish diplomatic and consular posts.**

In accordance with the information provided by MFA, the guide ‘A Pole Abroad’ was available in bookshops for some years. In 2009, the guide for the first time appeared only in the electronic version on the website of the MFA. Electronic publication has opened a possibility for more frequent updates. The content of the guide is developed principally by consular offices, whose job is to bring the information up to date. The MFA declares that the guide will undergo a major upgrade in the next edition to come. It is to be graphically redesigned and made more readable to the recipient.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Generally, the issue of informing the authorities of the receiving States about the principle of granting consular protection to all EU citizens has not yet been settled. The exercise, on a permanent basis, of consular protection by the Polish consular posts for the citizens of another EU State in the third country may take place on the basis of bilateral agreements on (mutual) representation and after proper notification to the hosting country and after no explicit objection on its part.

Poland has concluded only a few bilateral agreements with two EU countries, namely Hungary and Lithuania, which relate directly to rendering permanent consular assistance.

The agreement with Hungary was concluded in the form of the exchange of diplomatic notes of 8 June 2000 (Polish note) and 2 January 2001 (Hungarian note), that means still before the accession of Poland and Hungary to the EU. The agreement provides that Polish consuls will assist Hungarian nationals in the two third countries, Belarus and North Korea, in which Hungary has no representation. In special situations, it covers the arrival of the Hungarian consul from a neighbouring country and providing assistance to Hungarian citizens in the premises of the Polish consulate.

The determination of the extent of assistance that may be provided to Hungarian nationals was clearly inspired by Art. 5.1 of the 1995 Decision (Decision 95/553/EC) although is noticeably wider; namely the assistance is to be provided in the cases of:

- death,
- sudden, severe illnesses or misadventures,
- arrest, detention or other deprivation of liberty,
- consequences of crime whose victims were Hungarian nationals,
- intermediation with Hungarian posts in Warsaw or Beijing in issuing travel documents to Hungarian nationals who have lost them,
- relief to Hungarian nationals in organizing their return to Hungary.

Similarly, **Poland has concluded with Lithuania three agreements** for representation in the field of consular protection in the Maghreb states (Algeria, Morocco, Tunisia).

²³ http://www.msz.gov.pl/Poradnik_Polak_za_granicą_20735.html

These agreements were concluded in early 2000, that is also before the accession of the State-parties to the EU²⁴.

In addition, Poland has concluded a series of agreements on visa representation with some EU Member States (Slovenia, Estonia, Netherlands and Sweden; some other agreements are expected to be concluded in the very near future), both as a State acting on behalf of those countries as well as a state benefiting in this respect from their services. It is likely, that the consular cooperation that has been launched in this way will be extended to other fields, such as consular protection.

3.2. Statistical data on consular practice

In accordance with the data provided by the Ministry of Foreign Affairs, **from 2007 to 2009 Polish consular posts noted a total of 154.230 cases of consular intervention in favour of Polish citizens and 48 cases in favour of citizens of other EU Member States (that makes ~0,03% of total number of interventions).**

The Consular Department of MFA does not keep statistics related to specific types of consular operations of Polish posts.

In the same period, there were 22 cases noted of Polish citizens who benefited from consular protection extended by posts of other EU Member States. The number of other EU states intervening in favour of Poles has only been estimated, due to the lack of data available on this subject by the majority of Polish missions. The missions recorded only those cases in which they mediated by way of establishing a telephone contact with an EU country consular post in a third country in order to request specific assistance for a Polish citizen, or in which Polish consuls continued to provide assistance to the citizen after initial involvement of another EU Member State. In general, the Ministry is not being informed about such cases in which Polish citizens make a direct contact with consular posts of other EU countries which then provide assistance in a manner that does not involve the Polish party (e.g., in cases in which no financial assistance is needed). **In April 2010, the Office of Polish Ombudsman unofficially stated that there were no complaints from citizens of other EU Member States related either to refusal of assistance or inadequate assistance by Polish consuls.**

It is worth to underline that many of the mentioned cases concerning Polish interventions in favour of EU citizens were conducted for Lithuanian citizens in Maghreb. Thus, the legal basis for the interventions was the bilateral agreement on permanent representation in the meaning of Art. 1 of Decision 95/553/EC rather than the Decision itself.

4. Consular protection in detail

4.1. Right to consular (and diplomatic) protection

The right to protection during a stay abroad is guaranteed by the Polish Constitution. Since the Constitution does not determine the scope of protection some authors consider it to include both diplomatic and consular protection **If a consul does not provide adequate protection when asked by Polish citizen who finds himself or herself in a distress situation, it is possible to take a legal action and bring this**

²⁴ The agreements were concluded in the form of an exchange of notes: the three Lithuanian notes of 14 December 1999: No. 798/99 (Tunisia), No. 799/99 (Morocco), No. 800/99 (Algeria) and the three corresponding Polish notes of 24 January 2000.

matter to the court's attention. If the citizen suffers damage due to the inaction on the part of the consul, he or she may claim compensation²⁵.

Under Polish legislation, consular protection is guaranteed in an express manner to Polish citizens only. The legislation does not extend the right to be protected to non-Polish family members of a Polish national. In consular practice such assistance might be provided but the factor of citizenship plays an important role here as far as it legitimizes consular activities *vis a vis* the hosting State.

Polish law so far does not expressly provide for assistance to persons who are granted refugee status in Poland or benefit from other forms of protection, either. In consular practice, all persons who possess a Polish travel document will be considered by consular officers as entitled to basic consular protection that however will, normally, not involve any financial assistance.

It should be noted that the Polish Code of Criminal Procedure clarifies that in the event of a detention of a stateless person, the detained has a right to contact a representative of the country where he or she resides²⁶. In addition, in cases of arrest of foreign nationals from countries with which Poland has no diplomatic relations, or persons who were granted asylum, the information on arrest should be sent to the consular department of MFA²⁷. There is however a lack of legislation in respect of extent of activities that consuls should undertake to assist foreign nationals and stateless persons who are entitled to protection on the part of Poland.

Polish consular network is fairly well developed mainly on account of a large number of consulates headed by honorary consuls. Under the regime of People's Republic of Poland during the Cold War almost only professional consuls were used in consular relations. The possibility of establishing a consulate run by a honorary consul was re-established by 1984 Act on the Functions of Consuls and the first Polish honorary consul was nominated in March 1987 with consular district embracing Philippines²⁸.

Currently, Poland has 37 general consulates (with the highest number in Ukraine – 5 consulates), 11 consular departments within embassies and some 180 consulates run by honorary consuls²⁹.

Essentially, the assistance will also be rendered by the embassy in the absence of the consular department (or a separate consular post). In accordance with Art. 3 of the Act on the Functions of Consuls, at the diplomatic post, where the consular department is not established, consular functions may be exercised by the member of the diplomatic staff appointed by the Minister of Foreign Affairs. Lack of the consular department certainly should not affect the performance of assistance measures, which fall under the scope of Decision 95/553/EC. At most, it can impair the exercise of consular functions related to *stricte* legal acts (e.g., notarial deeds, legalization of documents), to translations, consular deposit but not the actions of assistance to citizens (*ius protectionis*).

Although the Regulation on honorary consuls³⁰ does not exclude the activity carried out by honorary consuls to assist Polish citizens since Section 8.2 of the Regulation provides for the protection of rights and interests of Polish nationals, in practice

²⁵ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. ..., op. cit.*, section 3 *in fine*.

²⁶ See Art. 612 section. 2, *Code of Criminal Procedure*.

²⁷ See Section 302, *Regulation of the Minister of Justice of 23 March 2010 – Rules of procedure for public prosecutor offices*, O.J. 2010, No. 49, Item 296.

²⁸ J. Sutor, *Prawo dyplomatyczne i konsularne*, 6th ed., Warszawa 2000, p. 366.

²⁹ See the MFA website: <http://bazateleadresowa.poland.gov.pl/>

³⁰ *Regulation of the Minister of Foreign Affairs of 7 December 2006 on honorary consuls of the Republic of Poland*, O.J. of 2006, No. 239, Item 1735.

however, such actions shall not in principle be exercised by them alone, even if they were defined for the honorary consul at the time of his or her appointment.

Currently, the issue of bringing some improvements within the functions of honorary consuls is under discussion in relation to the expected amendment of 1984 Act. It seems useful to clarify the scope of functions of honorary consuls and specify the activities that they can carry out within consular protection for Polish citizens.

As far as the concept of **Lead State** is concerned, Poland has not yet declared willingness to become the Lead State in an emergency situations in a third country. The MFA however declares that it considers making such a declaration.

4.2. Assistance in cases of death - Identifying and repatriating remains

In accordance with the general international practice the death of foreign citizens obliges national authorities to inform the country of citizenship (origin, permanent residence, etc.), which is normally done through consular channels.

No explicit reference to cases of death is to be found in 1984 Act on the Functions of Consuls. In practice, in the event of a Polish citizen dying abroad, and the consular (or diplomatic) post being informed about that, the post will attempt to collect information on the circumstances of death and pass this information to *Urząd Wojewódzki*. The consul may also be involved in the transfer of documents related to the death, including medical statements and/or available vital records.

As to identifying and repatriating remains, Consuls may provide assistance on a case-by-case basis.

4.3. Assistance in cases of serious accident or serious illness

No express referral to cases of serious accident or illness is to be found in 1984 Act on the Functions of Consuls. There are precise regulations on this matters only in some bilateral consular conventions concluded by Poland.

4.4. Assistance in cases of arrest or detention

According to the 1984 Act consuls should ensure that Polish citizens arrested, detained or deprived of liberty in any other way are provided in the receiving State with legal protection and treatment compatible with the domestic law of that country and international law.³¹ In particular consuls may undertake the following actions:

- ask courts and other State authorities for information on reasons for the arrest, detention, etc., and in particularly on charges brought against those citizens,
- visit those citizens and communicate with them by other means,
- if the citizen so requires, facilitate communication with his or her family and other close persons.

In a case concerning consular assistance provided by the Consulate in Lvov in a case of Polish citizen detained by Ukrainian Police the Warsaw Court of Appeal ruled in 2007 that the 1984 Act contains an open catalogue of consular activities in relation to those arrested, detained, etc. and does not leave the consul discretion as to whether he/she provides assistance or not, it simply allows him/her to chose the method of intervention³².

³¹ See Art. 13 of 1984 *Act on the Functions of Consuls*.

³² See the judgment of the Warsaw Court of Appeal of 13 December 2007, I ACa 580/07, *Orzecznictwo Sądów Apelacyjnych* 2009, No. 8, Item 24, p. 28.

If a consul determines that the rights of the citizen are fully protected, the detained (arrested) has possibilities to make contacts with the outside world, has a professional lawyer representing him/her, the consul can deal with the matter in a less intensive way and devote his/her attention to more disadvantaged persons. Similarly, consul may reduce its interest in the situation of the person detained (arrested) if the person was detained or arrested with the purpose to surrender that person to Polish authorities, that is, when the deprivation of liberty resulted from a request of Polish authorities for assistance in criminal matters, on the understanding that the surrender occurs in a short time.

4.5. Assistance to victims of violent crime

No specific legislation exists in relation to consular activities in cases involving violent crime.

4.6. Relief and repatriation of distressed citizens

On the one hand, the issue of consular assistance in emergency situations is not specifically regulated in Polish legislation. On the other hand, the MFA drafted detailed rules on how to react in emergency situations and sent them to consular posts in the form of internal documents (instructions). First was the *claris* No. 2507 of 24 December 2008, recently replaced by *Instructions concerning the principles of awarding Polish citizens consular assistance in emergency situations* of 12 May 2010. Both these documents concern, in the first place, Polish citizens, but they also invoke Art. 23 TFEU (*claris* invokes Art. 20 TEC) and remind consular officers about the entitlement of EU citizens to protection by the diplomatic or consular authorities of any Member State if, in the territory of a third country, their State is not represented.

The Instructions on emergency situation determine six basic areas of activities in the time of an emergency situation: (1) operational reactions, including collection of all available information, making contacts, visiting places of crisis situation, rendering assistance, organizing evacuation; (2) contacts with the MFA: sending information, consulting, acquiring consent for extraordinary expenses; (3) contacts with family members of the persons in the distress; (4) contacts with the media; (5) information for the public (6) cooperation with consular posts of other EU members.

Within the MFA there is a special unit foreseen for disasters and other distress situations – the Coordinator of consular assistance in emergency situations (*kierownik Referatu ds. Opieki Konsularnej w Sytuacjach Nadzwyczajnych*).

4.6.1. Natural disasters

Polish foreign service reacts on a case-by-case basis depending on the circumstances. In such disastrous situations, naturally, consular and diplomatic staff attempts to establish contacts with Polish citizens as soon as possible, to determine their condition and to evacuate them, if there such a need and the consent of those interested.

Definitely, in such situations a coordination of efforts of various EU states would be of help. During the emergency situation resulted from the earthquake in **Haiti** in January 2010, Poland made a proposal to indicate a leading country in line with the Lead State concept. It was however not implemented. After the earthquake, Poland send a plane to Haiti twice, however no one was evacuated; airplanes transported fire brigade and medical assistance. The 5 Polish citizens who were evacuated from Haiti, were assisted in the framework of European Consular Protection: 3 evacuated by France, 1 by Germany and 1 by Spain.

4.6.2. Terrorist acts

No specific legislation exists in relation to consular activities in cases of terrorist acts. In practice, consular officers would be first required to check whether among the victims of the attack are any Polish nationals, and then to provide assistance depending on the needs of victims and possibilities of Polish foreign service.

4.6.3. Pandemics

No specific legislation exists in relation to consular activities in cases of pandemics.

4.6.4. Military conflicts

No specific legislation exists in relation to consular activities in cases of military conflicts. In practice, consular officers would attempt to contact Polish nationals and their families and organize evacuations if the situation so requires. The assistance in evacuation would be extended to other EU citizens if they or their countries so requested.

At the time of 2008 **Russian-Georgian conflict**, Polish MFA organized the evacuation of Polish citizens from Georgia. As the MFA reports, Poland was the first EU country to take the decision on evacuation. It extended it also to nationals of other EU countries. In total, there were four flights organized: three of the governmental aircraft TU 154 (two to Yerevan and one to Trabzon) and the Boeing 737 flight to Yerevan. A total of 365 people were evacuated, with 275 Poles, 45 Czechs, 14 Georgians having a permanent residence permit in Poland, 7 Estonians, 5 Britons, 5 Slovaks, 4 Ukrainians with a residence permit in the EU, 3 Germans, 3 Spaniards, 2 Dutchmen, 1 Dane, and 1 Russian with permanent residence in Germany. Poland did not request any reimbursement from other EU countries for the costs of evacuation of their nationals.

4.6.5. Financial advances

Financial assistance may be provided to a Polish citizen who temporarily stays abroad in order to enable him/her to return to Poland. Normally, such assistance will be made dependant on that citizen signing an undertaking to reimburse total or partial costs before a specified deadline³³. Only in exceptional situations, a consul may provide social assistance to inhabitants of the receiving State who are in poverty and are of Polish origin.

The detailed rules on granting financial assistance are specified in the Regulation of the Minister of Foreign Affairs of 28 August 2002³⁴.

4.7. Consular fees

Consular assistance itself is not subject to any charges. Generally, the existing fees may be related to specific activities that result in release of documents, e.g., passports, Pole's Cards, emergency travel documents, legalization (authentication) of documents, etc.³⁵.

³³ See Art. 16 of 1984 *Act on the Functions of Consuls*.

³⁴ *Regulation of the Minister of Foreign Affairs on granting financial assistance by a consul of the Republic of Poland* of 28 August 2002, Official Journal of 2002, No. 151, Item 1262.

³⁵ For more see *Regulation of the Minister of Foreign Affairs of 14 August 2003 on consular charges*, Official Journal 2003 No 156, item 1530.

4.8. Reimbursement of the assisting State

The reimbursement of costs incurred by a foreign State that assisted a Polish citizen may be made upon that State's request. In principle, for any financial assistance to be provided by the foreign State to the Polish citizen that State should obtain a prior consent of Polish MFA if plans to be reimbursed.

4.9. Case studies, in particular problematic practices

It is worth to mention the case before the Warsaw Court of Appeal – *Piotr N. v. State's Treasury / the Minister of Foreign Affairs* (judgement of 13 December 2007, No. I ACa 580/2007). Piotr N. was a Polish citizen acting on the territory of Ukraine and providing legal assistance for Polish nationals residing in Ukraine. He was detained by the Ukrainian police officers after they received information that he was wanted on the basis of a Polish arrest warrant. After four days in detention (according to the complainant, he was kept in poor conditions, was severely beaten, Ukrainian officers refused him the assistance of an interpreter, medical assistance, and the access to the consul, etc.), Piotr N. was transferred to the border and turned over to the Polish authorities. The criminal court proceeding in Poland ended with his acquittal. At the time of his detention, the Polish consul in Lvov was informed of the detention of Piotr N. After the Consul received official note from the Ukrainian authorities, he phoned to the detainee's wife, informed her about her husband's detention, and also about the fact that her husband was wanted for a proceeding in Poland. The wife requested the consul to check, whether there is a possibility to ensure medical assistance for the detainee. The Consul promised to do that, that is to check the possibility, he did not however promise the expected result. Eventually, medical assistance was not provided to the detainee. Probably, after having received information on the coming deportation of the detainee to Poland, the consul did not undertake any special activity in order to protect the citizen's rights. Probably, he did not recognise such activity as necessary in this particular case.

Piotr N. lodged a complaint with the Polish court accusing Polish consul in Lvov of the lack of special activity in his case. The last instance court i.e., the Warsaw Court of Appeal rejected the complaint and proclaimed *inter alia* that:

"(...) Art. 36 of the Constitution is of general character and does not provide any specific duties for public authorities. However, the established in this provision right of Polish national of assistance during his stay abroad may not become neutral for interpretation of lower rank provisions concerning the same substance. In particular, an obvious fact shall be remembered, that the Polish national's right of assistance must be related with the State's duties, so that the right would not be illusory (...)";

"(...) Art. 13 of the Act of 13 February 1984 on functions of consuls of the Republic of Poland, which contains an open catalogue of possible actions of the consul towards persons who were detained, arrested or in any other way deprived of liberty, shall not be interpreted in a manner which would allow discretion in performing actions in the interest of the detained (arrested or deprived of liberty) person (...)";

But:

"(...) In any case, such [consular] actions shall be adjusted to circumstances. Therefore, Art. 13 of the Act of 13 February 1984 does not vest the consul a freedom to take decision on performing assistance but only to decide on the way of performing such assistance (choice of the adequate form of assistance) (...)".

In this case the complainant did not introduce appropriate evidence that his damage was an effect of the lack of consular activity and that he suffered any real damage. As a consequence, it was difficult to assess the consul's activity as insufficient.

5. Emergency travel document (ETD)

No distinct legislative action was taken to implement the Decision 96/409/CSFP on the establishment of an emergency travel document. In practice ETDs are issued when there is need to do so because from the point of view of the Polish Ministry of Foreign Affairs the 1996 Decision is treated as an international agreement concluded in a simplified form and has a self-executing character. Art. 23.1, Act of the Functions of Consuls, clearly states that the consul may issue travel documents to foreign nationals and grant entry visas to other countries. This provision allows to issue documents for European citizens within the European consular protection exercised by Polish consuls, as well as provides the basis for Polish consuls acting within the European visa representation.

6. Relevant diplomatic protection

As was pointed above, the 1997 Constitution ensures a general entitlement of Polish citizens to protection during a stay abroad. **It is believed that this includes both consular assistance and diplomatic protection.** Nonetheless, it is hard to imagine many examples of diplomatic protection being carried out in relation to an individual person. Usually, diplomatic relations involve political issues of interstate relation. As a consequence of diplomatic relations occurring on a political level and being pursued mostly via confidential dialogue, the information available on diplomatic process is fairly limited. As a rule diplomatic protection *in favorem tertii* (extended to non-Polish citizens) will mostly be witnessed during military or other conflicts, e.g., after the Iraqi aggression on Kuwait in August 1990. Poland represented interest of the USA to Iraq which involved instances of assistance being offered to US nationals.

7. Exercise of consular functions for expats

Administrative services

Consuls exercise a wide range of administrative functions: related to Polish citizenship, Pole's Card³⁶, issuing passports, issuing visas for foreigners, marine administrative functions (with no practical relevance today.) In addition, Article 18 of the Act on the Functions of Consuls provides for the service of judicial and administrative documents to Polish citizens abroad. Under Polish law consuls may also be competent to issue certificates in some cases.

Elections abroad

According to the electoral law the elections to the *Sejm* (lower chamber of Parliament), the Senate (upper chamber of Parliament), the European Parliament and Presidential elections are conducted also abroad. Polish diplomatic representations and consulates create constituencies abroad and host electoral commissions. The Act on the Functions of Consuls do not determine any obligations of consuls in this respect, it does not however raise practical problems, though it is planned to supplement the existing legislation in this context.

³⁶ *Karta Polaka* (Pole's Card, Polish Card) – a document confirming belonging to the Polish nation granted to those people who do not have citizenship of Poland.

E-voting

Electronic voting is not possible in the light of Polish law since laws on elects do not provide an option of e-voting. It is planned, however, to enable electronic enrollment on the list of people entitled to vote.

Driving licenses

Consuls have no competence to issue driving licenses.

Passports and identity documents

Consuls may exercise powers to issue or mediate in issuing passports and identity documents only when such a possibility is expressly provided for in Polish law. On the one hand, a consul can neither issue or even mediate in issuing an identity card of Polish citizen (*dowód osobisty*). On the other hand, the same consul may issue a passport on the basis of which the individual arrives in Poland to obtain the ID card.

Military service

In Poland, there is currently no compulsory military service, so there are no obligations for consuls in this regard (e.g., registration of nationals of military age).

Acts as notary and civil registrar

Consuls perform a number of notary actions in accordance with Article 19 of Act on the Functions of Consuls. In matters not covered by the Act itself, it refers to the Act on Notarial Law. Consuls may carry out notary actions at the request of a citizen of Poland, Polish public authorities, or at any request if the actions are to produce legal effects on the territory of Poland. A number of private law actions require under Polish law a special form of a notarial deed (e.g., the transfer of ownership of real estate, power of attorney to dispose of the real property, act of creation of a legal person in Poland and power of attorney for this act). To draw up such a notarial deed, the Consul must first obtain special permission from the Minister of Justice at the request of the Minister of Foreign Affairs. To obtain this permission (which is allowed on a case-by-case base) it takes a lot of time, what means that it is more comfortable for a party to create that act before a notary of the receiving State in formal accordance with *lex loci actus* principle³⁷. When such an act concerns the transfer of ownership of real estate located in Poland (e.g., power of attorney to sell or buy real property) according to Art. 1138 of Polish Code of Civil Procedure it should be legalized by Polish consular officer or certified with an Apostille clause in case when such document originates from a party to the 1961 Hague Convention. A consul cannot produce a notarial deed that certifies inheritance since consuls have not been embraced by the electronic system of courts and notaries. This limitation is expressly provided in the Act on the Functions of Consuls³⁸.

Consuls may perform some functions of civil registrars. In addition to the Act on the Functions of Consuls, a detailed regulation on this matter is included in the Family and Guardianship Code and the Law on Civil Status Acts. In principle, consuls only receive statements (acts of will) and do not issue civil status acts. Consuls mediate in reporting legally relevant events like births, deaths, marriages, etc. and transmit protocols related to those events to the competent domestic bodies, which then on their basis issue required civil status acts.

³⁷ Practical problem of legal effects of such acts however exists when an agreement between Poland and a receiving country indicates the *lex rei sitae* principle - see [Section 2.1](#) of this Report.

³⁸ See Art. 19.4a.

Marriages

Polish nationals may get married before a consul³⁹. Some consular conventions concluded by Poland furnish consuls with the right to accept a declaration of marriage between a Polish citizen and a third country national. Consuls may issue certificates of legal capacity to marry abroad.

Marriages concluded before a consul are relatively frequent. It may give rise to practical problems in some cases, for example, if the host country does not recognize such marriages in its legal order (e.g., there have been some problems in this respect in case of Ireland).

Health services

Normally, consuls will not be involved in safeguarding health services to nationals permanently residing abroad.

Heritage questions

Consuls will not assist nationals in inheritance proceedings. In general, as far as the protection of financial interests is concerned, consular functions are limited to the protection of interests of the Polish State Treasury in inheritance and other dues⁴⁰. In practice, an individual may only expect advice on getting in contact with a lawyer. A consular post might provide a list of practicing lawyers and possibly indicate those who have a command of Polish language.

Social security questions

As far as social security issues are concerned, consular officers do not possess any specific functions. They may be however indirectly involved in social security matters, e.g., for the use of determining a social security benefit, consul may confirm that the person is alive.

Property questions

Protection of the assets of a Polish citizen may be held as a part of the general protection of the rights and interests⁴¹ or guardianship (trusteeship) over the property of Polish nationals⁴².

Registration (as an expat)

Currently, Polish law does not provide for any obligatory registration (census) of Polish nationals residing abroad. Only the consular activities are formally recorded. It is planned to introduce optional registration⁴³ of nationals in accordance with the Green Paper. In practice consular officers do conduct informal list of Poles residing in their districts. In addition, Polish nationals when they live in or visit countries or region of ongoing civil unrest, riots, high crime, etc. are encouraged to leave information at a consular post of their intended whereabouts.

8. Summary

Poland is a party to some most important multilateral conventions related to consular activities but Polish consular relations with other countries are first and foremost based on a firm network of 40 bilateral consular conventions, some 40 agreements on mutual legal aid and some other bilateral agreements, e.g., on representation in the field of

³⁹ See Art. 26 of 1984 *Act on the Functions of Consuls*.

⁴⁰ See Art. 15 of 1984 *Act on the Functions of Consuls*.

⁴¹ See Art. 12 of 1984 *Act on the Functions of Consuls*.

⁴² See Art. 14 of 1984 *Act on the Functions of Consuls*.

⁴³ It is highly unlikely to introduce effective obligatory registration since in Poland it would probably be compared to forced registration under communism regime.

consular protection (Lithuania, Hungary) and on visa representation. In addition to binding treaty relations, informal arrangements can be made on an *ad hoc* basis.

Polish consular officers around the world are informed of the requirements stemming from European citizenship and the right of EU citizens to request their assistance in certain situations. The practical dimension of Polish consuls providing such assistance appears, however, to be near the ground since the noted cases are very rare and amount to some 0,03% of all consular interventions.

Polish law concerning consular activities is fairly well-developed, e.g., the right to protection abroad has constitutional rank and Poland has separate legislation on consuls (Act on the Functions of Consuls). Nonetheless, both Polish legislation and internal rules (ministerial instructions) lack an explicit corroboration of European consular protection. The MFA is aware of the need to bring changes to the law and has begun an amendment process, which however does not seem to be a speedy one.

An effective way to safeguard EU citizens interests as far as consular protection is concerned seems to be to rebuilt the contemporary European protection mechanism of Decision 95/553/EC into a **network of reciprocal relations among the EU states concerning permanent representation of consular interests in third countries. European citizens in the country where there is no consular post or diplomatic representation of their own country would benefit from the protection rendered by a particular EU country, which has an agreement with the country of their citizenship on permanent representation in the particular third country.** It would solve problems existing in the contemporary European mechanism (e.g., consular assistance shopping, obligation to render assistance which is not precise enough) and could easily be ensured even in agreements on visa representation. Such an evolution towards a network of bilateral agreements would mean, however, that to put European consular protection into effective operation one does not really need to invoke EU citizenship, which for political reasons might not be accepted easily.

9. List of important documents

International treaties and related national instruments

There are 40 bilateral consula conventions concluded by Poland, applied in 46 countries⁴⁴.

1.

Afghanistan

Title of agreement: Konwencja konsularna między PRL a Demokratyczną Republiką Afganistanu - Consular Convention between the Polish People's Republic and the Democratic Republic of Afghanistan.

Signed (Y-M-D): 1984-06-11.

Entry in force (Y-M-D): 1985-05-06.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1985/41/198.

2.

Algeria

Title of agreement: Konwencja konsularna między Rządem PRL a Rządem Algierskiej Republiki Ludowo - Demokratycznej - Consular Convention between the Government of Polish People's Republic and the Government of the People's Democratic Republic of Algeria.

Signed (Y-M-D): 1983-12-04.

Entry in force (Y-M-D): 1985-03-14.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1985/16/67.

⁴⁴ Full texts of these consular agreements (in official languages in which these treaties were concluded) available at the website of the Polish Ministry of Foreign Affairs
<http://www.traktaty.msz.gov.pl/SearchTreaties.aspx?t=DW> .

3.

Austria

Title of agreement: Konwencja Konsularna między PRL a Republiką Austrii - Consular Convention between the Polish People's Republic and the Republic of Austria.

Signed (Y-M-D): 1974-10-02.

Entry in force (Y-M-D): 1975-07-22.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1975/24/131

4.

Belarus

Title of agreement: Konwencja Konsularna między Rzeczpospolitą Polską a Republiką Białoruś - Consular Convention between the Republic of Poland and the Republic of Belarus.

Signed (Y-M-D): 1992-03-02.

Entry in force (Y-M-D): 1994-01-29

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1994/50/197.

5.

Belgium

Title of agreement: Konwencja Konsularna między PRL a Królestwem Belgii - Consular Convention between the Polish People's Republic and the Kingdom of Belgium.

Signed (Y-M-D): 1972-02-11.

Entry in force (Y-M-D): 1973-12-22.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1974/3/18.

6.

Bulgaria.

Title of agreement: Konwencja Konsularna między Rzeczpospolitą Polską a Republiką Bułgarii - Consular Convention between the Republic of Poland and the Republic of Bulgaria.

Signed (Y-M-D): 1994-04-11.

Entry in force (Y-M-D): 1999-07-02.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1999/63/711.

7.

Cambodia

Title of agreement: Konwencja konsularna między PRL a Ludową Republiką Kampuczy - Consular Convention between the Polish People's Republic and the People's Republic of Campuchia.

Signed (Y-M-D): 1987-07-2

Entry in force (Y-M-D): 1989-07-08.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1989/62/372.

8.

China

Title of agreement: Konwencja konsularna między Rządem PRL a Rządem Chińskiej Republiki Ludowej - Consular Convention between the Government of the Polish People's Republic and the Government of the People's Republic of China.

Signed (Y-M-D): 1984-07-14.

Entry in force (Y-M-D): 1985-02-21.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1985/8/24.

9.

Croatia

Title of agreement: Konwencja Konsularna między RP a Republiką Chorwacji - Consular Convention between the Republic of Poland and the Republic of Croatia.

Signed (Y-M-D): 1995-02-21.

Entry in force (Y-M-D): 1997-07-06.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1997/127/815.

10.

Cuba

Title of agreement: Konwencja konsularna między PRL a Republiką Kuby - Consular Convention between the Polish People's Republic and the Republic of Cuba.

Signed (Y-M-D): 1972-05-12.

Entry in force (Y-M-D): 1975-04-28.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1975/21/111.

11.

Cyprus

Title of agreement: Konwencja konsularna między Rządem PRL a Rządem Republiki Cypru - Consular Convention between the Government of the Polish People's Republic and the Government of the Republic of Cyprus.

Signed (Y-M-D): 1980-07-03.

Entry in force (Y-M-D): 1984-08-18.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1984/48/249.

12.

Czechoslovakia - successors to the convention: Czech Republic; Slovakia

Title of agreement: Konwencja konsularna między PRL a Czechosłowacką Republiką Socjalistyczną - Consular Convention between the Polish People's Republic and the Socialist Republic of Czechoslovakia.

Signed (Y-M-D): 1972-06-09.

Entry in force (Y-M-D): 1973-04-19.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1973/19/108.

13.

Estonia

Title of agreement: Konwencja Konsularna między Rzeczpospolitą Polską a Republiką Estońską - Consular Convention between the Republic of Poland and the Republic of Estonia.

Signed (Y-M-D): 1992-07-02.

Entry in force (Y-M-D): 1997-01-13.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1997/125/798.

14.

Finland.

Title of agreement: Konwencja konsularna między PRL a Republiką Finlandii - Consular Convention between the Polish People's Republic and the Republic of Finland.

Signed (Y-M-D): 1971-06-02.

Entry in force (Y-M-D): 1973-01-14.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1973/2/11.

15.

France

Title of agreement: Konwencja konsularna między PRL a Republiką Francuską - Consular Convention between the Polish People's Republic and the French Republic.

Signed (Y-M-D): 1976-02-20.

Entry in force (Y-M-D): 1977-06-19.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1977/19/76.

16.

Greece

Title of agreement: Konwencja konsularna między PRL a Republiką Grecką - Consular Convention between the Polish People's Republic and the Hellenic Republic.

Signed (Y-M-D): 1977-08-30.

Entry in force (Y-M-D): 1979-04-29.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1979/12/82.

17.

Hungary

Title of agreement: Konwencja Konsularna między PRL a Węgierską Republiką Ludową - Consular Convention between the Polish People's Republic and the Hungarian People's Republic.

Signed (Y-M-D): 1973-06-05.

Entry in force (Y-M-D): 1974-01-07.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1974/5/28.

18.

Iraq

Title of agreement: Konwencja konsularna między Rządem PRL a Rządem Republiki Iraku - Consular Convention between the Government of the Polish People's Republic and the Government of the Republic of Iraq.

Signed (Y-M-D): 1980-04-16.

Entry in force (Y-M-D): 1982-07-24.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1982/27/194.

19.

Italy

Title of agreement: Konwencja konsularna między PRL a Republiką Włoską - Consular Convention between the Polish People's Republic and the Italian Republic.

Signed (Y-M-D): 1973-11-09.

Entry in force (Y-M-D): 1977-03-17.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1977/9/35.

20.

Yugoslavia - successors to the convention: Bosnia and Herzegovina; Montenegro; Macedonia; Serbia; Slovenia

Title of agreement: Konwencja Konsularna między Rządem PRL a Związkową Radą Wykonawczą Zgromadzenia SFRJ - Consular Convention between the Government of the Polish People's Republic and the Federal Executive Council of Assembly of the Socialist Federal Republic of Yugoslavia.

Signed (Y-M-D): 1982-12-02.

Entry in force (Y-M-D): 1983-11-06.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1984/11/48.

21.

Kazakhstan

Title of agreement: Konwencja konsularna między RP a Republiką Kazachstanu - Consular Convention between the Republic of Poland and the Republic of Kazakhstan.

Signed (Y-M-D): 1997-11-27.

Entry in force (Y-M-D): 2006-11-10.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 2008/155/966.

22.

Kyrgyzstan

Title of agreement: Konwencja konsularna między RP a Republiką Kyrgyską - Consular convention between the Republic of Poland and the Republic of Kyrgyzstan.

Signed (Y-M-D): 1993-06-05.

Entry in force (Y-M-D): 1999-10-20.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1999/99/1153.

23.

Latvia

Title of agreement: Konwencja Konsularna między RP a Republiką Łotewską - Consular Convention between the Republic of Poland and the Republic of Latvia.

Signed (Y-M-D): 1992-12-17.

Entry in force (Y-M-D): 1993-10-20.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1993/112/494.

24.

Laos

Title of agreement: Konwencja konsularna między PRL a Laotańską Republiką Ludowo-Demokratyczną - Consular Convention between the Polish People's Republic and the Lao People's Democratic Republic.

Signed (Y-M-D): 1983-11-23.

Entry in force (Y-M-D): 1995-01-12.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1995/46/240.

25.

Libya

Title of agreement: Konwencja konsularna między PRL a Libijską Arabską Dżamahiriją Ludowo-Socjalistyczną - Consular Convention between the Polish People's Republic and the Socialist People's Libyan Arab Jamahiriya.

Signed (Y-M-D): 1982-06-16.

Entry in force (Y-M-D): 1985-09-02.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1985/60/307.

26.

Lithuania

Title of agreement: Konwencja konsularna między RP a Republiką Litewską - Consular Convention between the Republic of Poland and the Republic of Lithuania.

Signed (Y-M-D): 1992-01-13.

Entry in force (Y-M-D): 1993-12-15.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1994/30/108.

27.

Mexico

Title of agreement: Konwencja konsularna między PRL a Stanami Zjednoczonymi Meksyku - Consular Convention between the Polish People's Republic and the United Mexican States.

Signed (Y-M-D): 1985-06-14.

Entry in force (Y-M-D): 1986-06-15.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1986/37/183.

28.

Moldova

Title of agreement: Konwencja Konsularna między RP a Republiką Mołdowy - Consular Convention between the Republic of Poland and the Republic of Moldova.

Signed (Y-M-D): 1994-11-15.

Entry in force (Y-M-D): 1998-01-10.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1998/43/255.

29.

Mongolia

Title of agreement: Konwencja konsularna między PRL a Mongolską Republiką Ludową - Consular Convention between the Polish People's Republic and the People's Republic of Mongolia.

Signed (Y-M-D): 1973-05-31.

Entry in force (Y-M-D): 1974-01-27.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1974/3/22.

30.

North Korea

Title of agreement: Konwencja konsularna między PRL a Koreańską Republiką Ludowo - Demokratyczną - Consular Convention between the Polish People's Republic and the Democratic People's Republic of Korea.

Signed (Y-M-D): 1982-08-03.

Entry in force (Y-M-D): 1983-06-30.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1983/54/239.

31.

Romania

Title of agreement: Konwencja Konsularna między RP a Rumunią - Consular Convention between the Republic of Poland and Romania.

Signed (Y-M-D): 1993-01-25.

Entry in force (Y-M-D): 1994-01-13.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1994/29/104.

32.

Russia

Title of agreement: Konwencja Konsularna między RP a Federacją Rosyjską - Consular Convention between the Republic of Poland and the Russian Federation.

Signed (Y-M-D): 1992-05-22.

Entry in force (Y-M-D): 1995-10-28.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1995/140/687.

33.

Syria

Title of agreement: Konwencja konsularna między Rządem PRL a Rządem Syryjskiej Republiki Arabskiej - Consular Convention between the Government of the Polish People's Republic and the Government of the Syrian Arab Republic.

Signed (Y-M-D): 1981-04-10.

Entry in force (Y-M-D): 1985-10-30.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1986/14/82.

34.

Tunisia

Title of agreement: Konwencja konsularna między PRL a Republiką Tunezyjską - Consular Convention between the the Polish People's Republic and the Republic of Tunisia.

Signed (Y-M-D): 1985-03-06.

Entry in force (Y-M-D): 1985-11-25.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1986/40/194.

35.

Turkey

Title of agreement: Konwencja Konsularna między PRL a Republiką Turecką - Consular Convention between the the Polish People's Republic and the Republic of Turkey.

Signed (Y-M-D): 1987-06-05.

Entry in force (Y-M-D): 1989-04-14.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1989/51/303.

36.

Ukraine

Title of agreement: Konwencja Konsularna między RP a Ukrainą - Consular Convention between the Republic of Poland and Ukraine.

Signed (Y-M-D): 1991-09-08.

Entry in force (Y-M-D): 1994-01-21.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1994/60/248.

37.

United Kingdom of Great Britain and Northern Ireland

A. *Title of agreement:* Konwencja konsularna między PRL a Zjednoczonym Królestwem Wielkiej Brytanii i Północnej Irlandii - Consular Convention between the Polish People's Republic and the United Kingdom of Great Britain and Northern Ireland.

Signed (Y-M-D): 1967-02-23.

Entry in force (Y-M-D): 1971-08-13.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1971/20/192.

B. *Title of agreement:* Protokół zmieniający Konwencję Konsularną między PRL a Zjednoczonym Królestwem Wielkiej Brytanii i Północnej Irlandii, sporządzoną w Londynie dnia 23 lutego 1967 r. - Protocol amending the Consular Convention between the Polish People's Republic and the United Kingdom of Great Britain and Northern Ireland signed at London on 23 February, 1967.

Signed (Y-M-D): 1976-12-16.

Entry in force (Y-M-D): 1978-09-23.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1978/21/91.
[Convention applies also to Kiribati - according to an agreement between Poland and Kiribati of 1982-3-26, in force since 1984-3-26, not published in official sources].

38.

United States of America

Title of agreement: Konwencja Konsularna między Rządem PRL a Rządem Stanów Zjednoczonych Ameryki - Consular Convention between the Government of the Polish People's Republic and the Government of the United States of America.

Signed (Y-M-D): 1972-05-31.

Entry in force (Y-M-D): 1973-07-06.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1973/30/173.

39.

Uzbekistan

Title of agreement: Konwencja Konsularna między RP a Republiką Uzbekistanu. Consular Convention between the Republic of Poland and the Republic of Uzbekistan.

Signed (Y-M-D): 1995-01-11.

Entry in force (Y-M-D): 1997-01-09.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1997/33/197.

40.

Vietnam

Title of agreement: Konwencja Konsularna między PRL a Socjalistyczną Republiką Wietnamu - Consular Convention between the Polish People's Republic and the Socialist Republic of Vietnam.

Signed (Y-M-D): 1979-09-27.

Entry in force (Y-M-D): 1980-08-01.

Published in the Polish Official Journal (Dziennik Ustaw) [Year/Number/Item]: 1980/21/76.

National Legislation

41.

Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 r. – The Constitution of the Republic of Poland of 2 April 1997, O.J. of 1997, No. 78, Item 483.

42.

Ustawa z 13 lutego 1984 r. o funkcjach konsułów Rzeczypospolitej Polskiej – Act of 13 February 1984 on the Functions of Consuls of the Republic of Poland, O.J. of 2000, No. 215, Item 1823.

43.

Ustawa z 27 lipca 2001 r. o służbie zagranicznej – Act of 27 July 2001 on Foreign Service, O.J. of 2001, No. 128, Item 1403.

44.

Rozporządzenie Ministra Spraw Zagranicznych z 7 grudnia 2006 r. w sprawie konsułów honorowych Rzeczypospolitej Polskiej – Regulation of the Minister of Foreign Affairs of 7 December 2006 on Honorary Consuls of the Republic of Poland, O.J. of 2006, No. 239, Item 1735.

45.

Rozporządzenie Ministra Spraw Zagranicznych z 28 sierpnia 2002 r. w sprawie udzielania przez konsula Rzeczypospolitej Polskiej pomocy finansowej oraz trybu postępowania przy jej udzielaniu – Regulation of the Minister of Foreign Affairs of 28 August 2002 on granting financial assistance by a consul of the Republic of Poland and granting procedure, O.J. of 2002, No. 151, Item 1262.

46.

Rozporządzenie Ministra Spraw Zagranicznych z 14 sierpnia 2003 r. w sprawie opłat konsularnych – Regulation of the Minister of Foreign Affairs of 14 August 2003 on consular charges, O.J. of 2003, No. 156, Item 1530.

47.

Zarządzenie Ministra Spraw Zagranicznych z 4 listopada 1985 r. w sprawie szczegółowego trybu postępowania przed konsulem – Order of the Minister of Foreign Affairs of 4 November 1985 on a detailed procedure before a consul, Monitor Polski of 1985, No. 35, Item 233.

Case law

48.

Orzeczenie Sądu Apelacyjnego w Warszawie z 13 grudnia 2007 w sprawie Piotra N. przeciwko Skarbowi Państwa reprezentowanemu przez Ministra Spraw Zagranicznych – Judgment of the Warsaw Court of Appeal of 13 December 2007 in case of Piotr N. v. State Treasury represented

by the Minister of Foreign Affairs, I ACa 580/07, Orzecznictwo Sądów Apelacyjnych 2009, No. 8, Item 24.

Circulars, internal guidelines

49.

Claris No. 2507 of 24 December 2008 issued by Consular Department of Ministry of Foreign Affairs on emergency situations.

50.

Zarządzenie nr 13 Dyrektora Generalnego Służby Zagranicznej z 12 maja 2010 r. w sprawie wprowadzenia instrukcji dotyczącej zasad udzielania pomocy konsularnej obywatelom polskim w sytuacjach nadzwyczajnych – Order No. 13 of the Director General of Foreign Service of 12 May 2010 on introducing the Instructions concerning the principles of awarding Polish citizens consular assistance in emergency situations.



Portugal (PT)

1. Introduction

This Report contains the legal framework and national practice of the Member State Portugal on consular and diplomatic protection as of 1 January 2009.

The basis of the Report is: handbooks on international law and consular practice in Portugal, the website of the Portuguese Official Journal “*Diário da República*”¹, the website of the Portuguese case law database², the website of the Comparative Law and Documentation Office³, the website of the Portuguese Ministry of Foreign Affairs’ Secretariat for Portuguese Communities⁴ and interviews with officials from this Ministry and related internal documents.

1.1. Terminology - National acronyms and definitions

RC: Regulamento Consular: Consular Regulation

CRP: Constituição da República Portuguesa: Portuguese Constitution

Diário da República: Official Journal

MNE: Ministério dos Negócios Estrangeiros: Portuguese Ministry of Foreign Affairs

Secretaria de Estado das Comunidades Portuguesas: State Secretariat for Portuguese Communities

DGACCP: Direcção Geral dos Assuntos Consulares e Comunidades Portuguesas:
Directorat General for Consular Affairs and Portuguese Communities

Gabinete de Emergência Consular: Consular Emergency Office

Tribunal Constitucional: Constitutional Court

Supremo Tribunal Administrativo: Supreme Administrative Court

Supremo Tribunal de Justiça: Supreme Court

2. Legal framework

Portugal’s legal framework consists of contracting party to multilateral treaties, bilateral treaties, obligations under EC treaty, internal law (Consular Regulation) and State policy and practice.

The Portuguese Constitution does not directly establish a basic right to consular or diplomatic protection, although such right may be considered to be implicit in Article 14 CRP where it is stated that Portuguese citizens abroad benefit from the protection of the State for the exercise of their rights. **The Portuguese Consular Regulation of 1997 establishes a duty on the part of consular missions to provide consular protection to Portuguese individuals and corporations (Article 40 RC)**⁵.

¹ www.dre.pt

² www.dgsi.pt

³ www.gddc.pt

⁴ www.secomunidades.pt

⁵ This “duty to consular protection” was stated, although in reference to the Consular Regulation of 1920, by a Supreme Court Decision dated 12 February 2004. The text of the 1920 norm is very similar to the one in the 1997 and 2009 Consular Regulations.

2.1. International law

Portugal is/is not a Party to the following multilateral conventions:

- Vienna Convention on Consular Relations: since 13 September 1972 [*Diário do Governo* (Official Journal pre-1974) Decree-Law 183/72, 30 May 1972]. No reservations made.
 - o Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes: not party.
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80): signature 6 October 1978, ratification 7 July 1980 (DR Decree 31/79, 16 April 1979). No reservations made.

Portugal is also a Party to the following multilateral international treaties on consular and diplomatic protection:

- Vienna Convention on Diplomatic Relations: since 11 September 1968 [*Diário do Governo* (Official Journal pre-1974) Decree-Law 48295, 27 March 1968]. Initial reservation to paragraph 2 of Article 37, withdrawn in 1972
- European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers, London, 7 June 1968: signature 22 November 1979, ratification 13 December 1982 (DR Decree 99/82, 26 August 1982). No reservations made.
- **Agreement on Consular Cooperation between the Member States of the Portuguese Speaking Countries Community** (*Acordo de Cooperação Consular entre os Estados membros da Comunidade dos Países de Língua Portuguesa*), Lisbon, 24 July 2008: signature 24 July 2008, **not yet in force, nor published in the Official Journal**. No reservations made.

Formal bilateral agreements on consular protection exist with Brazil, Tunisia, Russian Federation, Hungary, Guiné-Bissau, Cabo Verde and Timor-Leste; bilateral treaties on Friendship and Cooperation, which contain provisions on consular protection, exist with Mozambique, Angola, S. Tomé e Príncipe and Ukraine.

2.2. Transposition of international law into national law

In Portugal, international law is part of the law of the land. International treaties that have been duly ratified or approved are directly applicable, after publication in the official journal and for as long as they remain internationally binding with respect to the Portuguese State (Article 8, n. 2, of the Portuguese Constitution).

2.3. Implementation of European law into national law

Article 23 TFEU is directly applicable.

Decision 95/553/EC was transposed by Decree 38/97, 23 July 1997.

Decision 96/409/CSFP was transposed by Decree 45/97, 3 September 1997.

2.4. National law

Portugal has a specific legal document on consular affairs, the **Consular Regulation**.

In the period covered by this Report, the Consular Regulation in force was the one set by Decree-Law 381/97, 30 December 1997, with the changes introduced to it in 1998 (Law 22/98, 12 May 1998) and 2006 (Decree-Law 162/2006, 8 August 2006). In March 2009, a new Consular Regulation was established by Decree-Law 71/2009, 31 March 2009, with mostly organizational changes to the previous regime. Both versions of the

Consular Regulation make abundant reference to International law and European law norms.

For consuls and diplomats, **an internal guideline entitled “*Protecção Consular*”** was enacted in 1993 by the Portuguese Ministry of Foreign Affairs and the State Secretariat for Portuguese Communities, with the purpose of complementing and updating the Consular Regulation from 1920, that was formally still in force. In spite of the adoption, in 1997 and 2009, of new Consular Regulations, this internal guideline is still used as a reference by public officials. **This internal guideline is not publicly available.**

Concise summary of internal guideline: The internal guideline presents the legal framework for consular protection by underlining the main aspects of the Vienna Convention and the Portuguese Consular Regulation, as well as listing other relevant national legal documents. In separate brief chapters, it describes the requirements, procedure and standard forms for the following consular acts: consular registration, passport request, legal affairs (including nationality issues, Notary and Registration), judicial competences, document issuing, assistance and repatriation. The internal guideline includes a chapter on consular protection and European cooperation in view of the, by then yet to ratify, Treaty of the European Union and the introduction of European citizenship.

The remedies against a refusal to provide consular protection are: the right to lodge a **complaint with the consular mission** [every consular mission has a complaint book for the users of the consular services (Article 9, n. 3, RC)⁶]; the right to **appeal to the Minister of Foreigner Affairs** (Article 158 and 169, n. 2, Administrative Procedure Code); and the right to **appeal to the administrative courts**, which may condemn the Portuguese Administration to provide the consular protection prescribed by law and/or to pay damages or otherwise redress the injuries which the individual may have sustained [Article 2, n. 2, paragraphs i) and f) of the Administrative Courts’ Code of Procedure].

2.5. Documentation of consular protection

There is no national compilation on Portuguese practice in International Law. Several text books on the subject of Consular Law do exist but are mostly theoretical and do not offer a comprehensive analysis of the relevant court decisions or parliamentary and diplomatic practice.

Relevant documents on the case law of the Constitutional Court, Supreme Court and Administrative Courts are available in the official legal information system, *Direcção Geral de Serviços Informáticos*⁷.

2.6. Information to citizens on consular protection

The official website of the Portuguese Ministry of Foreign Affairs’ Secretariat for Portuguese Communities⁸ provides all the relevant information on consular issues and, since 2007, it also provides consular services on-line with the “Virtual Consulate” (*Consulado Virtual*)⁹.

An Emergency Consular Office (*Gabinete de Emergência Consular*) provides continuous (24/7) assistance by phone.

⁶ This same provision is now Article 38, n. 3, of the Portuguese Consular Regulation of 2009.

⁷ www.dgsi.pt

⁸ <http://www.secomunidades.pt/web/guest/PostosConsulares>

⁹ www.consuladovirtual.pt

Leaflets with consular information are regularly issued by the Secretariat and made available at the consular missions and at travel agencies.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Most bilateral agreements signed by Portugal with third countries do not include provisions protecting Union citizens working and living in third countries. The exception is the [Consular Convention between Portugal and the Russian Federation \(2001\)](#), which states, in Article 36, that **Portuguese consular agents may act on behalf of Union citizens who are nationals of a Member State not represented in the Russian Federation territory**¹⁰. It does extend consular protection to family members who are not nationals of a Member State.

Portugal has not informed third countries of the practice of extending protection to Union citizens (Art 8 Vienna Convention on Consular Protection).

Portuguese bilateral agreements with third countries do not include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

According to the Consular Regulations of 1997 and 2009, Portugal does not extend consular protection to Union citizens' family members who are not nationals of a Member State. **The practice in case of evacuations has been, however, to cover all family members living with Portuguese citizens, irrespective of their nationality.** Until now, Portugal has not informed third countries of this practice.

Portugal has not started negotiations concerning agreements with third countries including provisions protecting Union citizens working and living in third countries.

Portugal has not started negotiations concerning agreements with third countries including provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

3.2. Statistical data on consular practice

Portugal offers extensive consular services to its citizens – assistance in case of arrest or detention, repatriation, accident, death, natural disaster, military conflict and civil unrest; protection to minors unassisted or in danger; issue of identity and travel documents; Notary services; social, legal and administrative support where needed (with special care for the elderly, the retired and unemployed); assistance in finding missing persons abroad. An **Emergency Consular Office** works 24 hours per day, providing permanent telephone assistance and operating an emergency management system by which citizens travelling abroad may register and upload information on their travel routes, lodging, contacts, etc. According to public officials interviewed, **most cases submitted to the Emergency Consular Office (circa 1000 per year) concern the loss of documents.**

There are very few cases of assistance provided by Portugal to Union citizens (on record, only 3 cases: 2 at the Portuguese consular mission in Montevideo and one at

¹⁰ “Com base na presente Convenção, os funcionários consulares da República Portuguesa poderão exercer as suas funções no território do Estado receptor relativamente aos cidadãos de outros Estados membros da União Europeia que não tenham o seu posto consular na respectiva área de jurisdição consular em conformidade com as normas vigentes sobre a matéria entre os Estados membros da União Europeia”.

the Portuguese consular mission in Beira-Mozambique, all in 2007), and there is no data available on whether Portugal has been experiencing problems in providing assistance to said citizens.

The statistical data concerning relevant consular acts performed in the last 3 years is not readily available, given that a full inventory has not yet taken place. An Observatory on Emigration¹¹ was created in 2008 and will eventually make that assessment, but, so far, the database is still under construction. **The numbers that were collected for this Report and that appear below are the result of interviews with public officials at the Ministry of Foreign Affairs and of correspondence with Portuguese consular missions around the world. They are, for the above given reasons, not accurate, but mere approximations.**

2008:

Consular acts:

- Emergency situations (accident, death, illness): at least 259
- Budget for emergency situations: no data available
- Life threatening situations: at least 1
- Issue of new passports: 93.998
- Notarizations: 428.064
- Nationality affairs: 25.538
- Legal protection: at least 5

2007:

Consular acts:

- Emergency situations (accident, death, illness): at least 182
- Issue of new passports: at least 4.122
- Notarizations: at least 15.403
- Nationality affairs: at least 655
- Legal protection: at least 4
- Consular protection for EU citizens: 3

2006:

Consular acts:

- Emergency situations (accident, death, illness): at least 203
- Life threatening situations: at least 3
- Issue of new passports: at least 4.433
- Notarizations: at least 15.865
- Nationality affairs: at least 826
- Legal protection: at least 3

Consular protection for Portuguese citizens received from other Member States' embassies in third countries in the last 3 years: no data available.

4. Consular protection in detail

The Portuguese consular network consists of General-Consulates, Consulates, Vice-Consulates, Consular Agencies and Honorary Consulates (Article 1, n. 1, RC)¹². The consular missions may set offices outside the main office, as well as

¹¹ <http://www.observatorioemigracao.secomunidades.pt>.

¹² This provision corresponds to Article 2, n. 1 and 2, of the Portuguese Consular Regulation of 2009.

maintain consular visits (“*presenças consulares*”) to certain communities (Article 1, n. 2 and 3, RC)¹³. There may also be consular sections at the diplomatic missions (Article 1, n. 4, RC)¹⁴. Every consular mission has a chancellery, an archive and an accounting office (Article 10 RC)¹⁵. The 2009 Consular Regulation introduced the Consular Area Consultative Councils, designed to work with the consular missions which have, at least, 1000 Portuguese citizens registered (Article 16 of the 2009 CR).

The **honorary consuls** are appointed by the Minister of Foreign Affairs who is free to choose from a number of Portuguese or foreign citizens deemed able to promote and defend the Portuguese interests abroad (Article 28, n. 4, RC)¹⁶. The appointment as honorary consul does not create any formal ties with the Portuguese Public Service nor does it mean that the honorary consuls become civil servants (Article 29 RC)¹⁷. The honorary consuls are not paid for the exercise of their functions (Article 30, n. 1, RC)¹⁸. The honorary consuls are not competent to perform civil registry and notary acts, to issue identity and travel documents, to grant visas and to perform acts pertaining to the electoral registration (Article 35, n. 2, RC).

The 2009 Consular Regulation introduced some significant changes in this regard. Article 25, n. 1, **defines the honorary consuls’ functions as the defense of the rights and legitimate interests of the Portuguese State and its nationals**. Honorary consuls are not competent to perform civil registry and notary acts, to issue identity and travel documents, to grant visas and to perform acts pertaining to the electoral registration (Article 25, n. 2, of the 2009 RC), **but, in exceptional circumstances, the Minister of Foreign Affairs may authorize them to perform the consular functions related to processes of electoral registration, to civil registration and notary acts and the the issuance of travel documents (Article 25, n. 3, of the 2009 RC)**. Exceptional circumstances occur when the honorary consulate is located at a distance of more than 600km from the consular mission of which it depends or when it is located in islands or countries where there is no Portuguese consular representation; when it is foreseeable that the honorary consulate will perform more than 1000 consular acts per year; or when it is located in an area where more than 1000 Portuguese citizens reside (Article 25, n. 4, 2009 RC).

In the absence or impediment of the honorary consul, if no replacement *ad interim* is designated, the consular mission remains closed (Article 33, n. 4, RC)¹⁹. The honorary consuls, as well as the vice-consuls and the consular agents, must act according to the guidelines set by the mission’s General-Consul or Consul, or, in its absence, by the chief of the corresponding diplomatic mission (Article 35, n. 3, RC)²⁰.

There is no data available on the implementation of the consular Lead State concept, on the co-location of consular posts, on burden sharing agreements, nor on other agreements with Member States on consular protection.

In Portugal, the legal basis for consular services is provided, first and foremost, by the Consular Regulation, adopted by Decree-Law 381/97, 30 December (revised in 1998 and 2006). As already mentioned, a new Consular Regulation came into force in April 2009 (Decree-Law 71/2009, 31 March). The new regime is not substantially

¹³ These provisions correspond to Article 2, n. 4 and 5, of the Portuguese Consular Regulation of 2009.

¹⁴ This provision corresponds to Article 2, n. 3, of the Portuguese Consular Regulation of 2009.

¹⁵ This provision corresponds to Article 9 of the Portuguese Consular Regulation of 2009.

¹⁶ This provision corresponds to Article 18, n. 3, of the Portuguese Consular Regulation of 2009.

¹⁷ This provision corresponds to Article 24 of the Portuguese Consular Regulation of 2009.

¹⁸ This provision corresponds to Article 26 of the Portuguese Consular Regulation of 2009.

¹⁹ This provision corresponds to Article 21, n. 4, of the Portuguese Consular Regulation of 2009.

²⁰ This provision corresponds to Article 5, n. 3, of the Portuguese Consular Regulation of 2009.

different from its predecessor in the matters that concern this Report. Our analysis of the legal framework will, therefore, focus on the rules set by the 1997 Consular Regulation and, where relevant, reference will be made to the 2009 Consular Regulation.

Summary of the 1997 Consular Regulation:

Consular structure and organizational framework.

Consular services – consular missions, consular inspection, personnel, privileges and immunities.

Consular acts – consular protection functions, issue of documents, notary services, fees, consular registration; cultural, economic and social functions; nationality issues and electoral processes; reports.

Consular cooperation within the European Union and the Lusophone Community.

The fees applied to the practice of consular acts are defined by a **Consular Fees Chart** (*Tabela de Emolumentos Consulares*), revised by Ordinance 710/2007, 11 June.

The Vienna Convention on Consular Relations, as well as the norms on consular protection contained in other international treaties to which Portugal is part, are directly applicable.

European rules are directly applicable. Decree 38/97, 23 July, transposed Decision 95/553/EC. Decree 45/97, 3 September, transposed Decision 96/409/CSFP.

Portuguese practice is compiled in the Internal Guideline on Consular Protection, enacted in 1993 by the Ministry of Foreign Affairs and the State Secretariat for Portuguese Communities. In spite of the adoption, in 1997 and 2009, of new Consular Regulations, this internal guideline is still used as a reference by public officials in matters where it does not conflict with the Consular Regulation in force.

There is only a very limited case law on the rules for consular protection. Most Supreme Court and Administrative Courts decisions on consular issues concern either diplomatic and consular immunities and privileges or disciplinary disputes. Two Supreme Court decisions deserve a brief mention here:

- *Decision of 12 February 2004* (referred to above) makes reference to a “**duty to consular protection**” while assessing the validity of the contracts based on which cash deposits were made by Portuguese citizens at the consular missions in Mozambique in the years after the country’s independence. However, the extent of consular protection provided to said citizens is not directly at stake in the decision.
- *Decision of 13 March 2008* concerns the validity of a testament made before a Consular official and elaborates on the Notary functions performed by Consulates and its respective requirements.

4.1. Right to consular (and diplomatic) protection

The Portuguese Constitution does not directly establish a basic right to consular or diplomatic protection, although **such right may be considered to be implicit in Article 14 CRP** where it is stated that Portuguese citizens abroad benefit from the protection of the State for the exercise of their rights.

According to Article 40, n. 1, of the Portuguese Consular Regulation (RC), the Portuguese consular missions shall provide assistance, where necessary and possible, to Portuguese individuals or corporations abroad, in accordance with internal and international law in force. Article 40, n. 2, extends said protection to stateless persons and refugees who reside in Portugal on a regular basis.

In principle, consular protection is not extended to family members who are not nationals of a Member State of the European Union, but the practice has been to provide assistance to the families of Portuguese/Union citizens as a whole, irrespective of the nationality of some of its members, in emergency cases like natural disasters or civil and military unrest.

Portuguese consular missions have a **duty to provide consular protection to European Union citizens on the territory of third countries where the Member State of which those citizens are nationals is not represented (Article 73, n. 1, RC)**²¹.

Portuguese consular missions shall cooperate with the authorities of other CPLP (Lusophone Community) Member States, namely by providing, when requested, consular protection to the nationals of those States (Article 74, n. 1, RC)²².

4.2. Assistance in cases of death

Consular missions **provide assistance**, when necessary, to the family members of Portuguese citizens who die abroad, by accompanying them through the necessary procedures, by safeguarding the interests of potential heirs and by making the necessary arrangements for the repatriation of remains [Article 40, n. 1, paragraph e) RC]. **Portuguese citizens who have the economic means to repay the State for the amounts spent on their assistance shall sign a document stating the amount due and acknowledging their duty to reimburse (Article 41, n. 1, RC)**²³. The written document is self-executing before any Portuguese Court, as stated by Article 41, n. 3, RC²⁴.

The Internal Guideline prescribes that the consular missions shall only engage in efforts to contact the next-of-kin if there is no local friend, colleague or employer to perform that task. If there is no one locally that may handle the legal formalities and contact the next-of-kin, the consular mission will contact the family members and keep them informed on the necessary arrangements. If that is the family members' wish, the consular agents will assist them in contacting local authorities in order to obtain a death certificate and arrange for the body to be buried, cremated or repatriated.

The Internal Guideline stresses the fact that **consular assistance with the burial, cremation or repatriation is merely subsidiary**, meaning that the consular agents will only intervene in the process of burial or repatriation of the body if expressly requested and in the absence of any person who might take responsibility (next-of-kin, employer, associate). Also, if no family member or person likely to take responsibility is found, the consular missions may take responsibility for the burial expenses, but only on exceptional cases and under a prior authorization by the State Secretariat.

4.2.1. Identifying and repatriating remains

Consular missions provide assistance, when necessary, to the family members of Portuguese citizens who die abroad, by making the necessary arrangements for the repatriation of remains [Article 40, n. 1, paragraph e) RC]. **Portuguese citizens who have the economic means to repay the State for the amounts spent on their assistance shall sign a document** stating the amount due and acknowledging their duty

²¹ This same provision is now Article 75, n. 1, of the Portuguese Consular Regulation of 2009.

²² This same provision is now Article 76, n. 1, of the Portuguese Consular Regulation of 2009.

²³ This same provision is now Article 42, n. 1, of the Portuguese Consular Regulation of 2009.

²⁴ This same provision is now Article 42, n. 3, of the Portuguese Consular Regulation of 2009.

to reimburse (Article 41, n. 1, RC)²⁵. The written document is self-executing before any Portuguese Court (Article 41, n. 3, RC)²⁶.

The Internal Guideline prescribes that, depending on the family members' wish, the consular agents will assist them in contacting local authorities in order to arrange for the body to be buried, cremated or repatriated. The Internal Guideline stresses the fact that consular assistance with the burial, cremation or repatriation is **merely subsidiary**, meaning that the consular agents will only intervene in the process of burial or repatriation of the body if expressly requested and in the absence of any person who might take responsibility (next-of-kin, employer, associate). Also, if no family member or person likely to take responsibility is found, the consular missions may take responsibility for the burial expenses, but only on exceptional cases and under a prior authorization by the State Secretariat.

4.3. Assistance in cases of serious accident or serious illness

Consular missions provide assistance in cases of accident, **striving to provide the medical assistance in need and making all other necessary arrangements** [Article 40, n. 1, paragraph b) RC]²⁷.

Repatriation of Portuguese citizens shall take place, if medical reasons so advise, in cases where there is a risk to the life of the patient and the local medical facilities are not able to provide an adequate response [Article 46, n. 1, paragraph b) RC]²⁸. Repatriation for medical reasons is subject to the express consent of the person to be repatriated or his/her representative (Article 46, n. 4 RC)²⁹. The transportation shall be made by the most convenient means, considering time and money (Article 46, n. 5 RC)³⁰.

In both cases, Article 41 RC³¹ applies, meaning that the **Portuguese citizens who have the economic means to repay the State for the amounts spent on their assistance shall sign a document** (self-executing before any Portuguese Court) stating the amount due and acknowledging their duty to reimburse. In cases of repatriation, the practice has been for the consular mission to retain the citizen's passport as an additional guarantee that the reimbursement will be made upon arrival in Portugal.

The Internal Guideline prescribes that the consular missions shall inform the next-of-kin or person responsible for the citizen who is sick or injured by an accident, but only if there is no one else (friend, associate, employer) to perform that task. Often, cases of serious accident or serious illness result in sanitary repatriations, in which cases the consular agents shall obtain, within possible, information on the clinical situation of the person to repatriate as well as all other medical information deemed useful (e.g., medication and special equipment needed during the trip and on arrival, need for an escort, etc.).

²⁵ This same provision is now Article 42, n. 1, of the Portuguese Consular Regulation of 2009.

²⁶ This same provision is now Article 42, n. 3, of the Portuguese Consular Regulation of 2009.

²⁷ The text of Article 40, n. 1, paragraph b, of the Portuguese Consular Regulation of 2009 is slightly different: consular missions shall provide assistance in cases of accident, *equivalent to the support received in Portugal*, striving to provide the necessary medical assistance and making all other necessary arrangements *adequate to the situation*.

²⁸ This same provision is now Article 43, n. 1, paragraph b, of the Portuguese Consular Regulation of 2009.

²⁹ This same provision is now Article 43, n. 4, of the Portuguese Consular Regulation of 2009.

³⁰ This same provision is now Article 43, n. 5, of the Portuguese Consular Regulation of 2009.

³¹ Article 42 of the Portuguese Consular Regulation of 2009.

4.4. Assistance in cases of arrest or detention

Article 40, n. 1, paragraph a) RC, prescribes, in general, that consular missions shall provide assistance to Portuguese citizens in need, as is the case in situations of arrest or detention.

The matter is treated in further detail by Article 40-A RC, where it is stated (in its n. 1) that **consular missions shall provide support to Portuguese citizens arrested or detained abroad, while keeping from interfering in the administration of Justice by local authorities**³².

Pursuant to this duty to offer support to arrested or detained Portuguese citizens, Article 40-A, n. 2 RC, prescribes that consular missions shall, upon request,

- a) contact local authorities to obtain information on the circumstances and detention conditions of the Portuguese citizens, as well as the legal framework of the allegedly committed offense, according to local law;
- b) provide assistance to detainees, namely by assessing their immediate needs, by informing the detainees of their rights and by providing them with a list of lawyers for their defense;
- c) contact the next-of-kin;
- d) make regular visits to the detainees, in order to ascertain their detention conditions and physical and mental health;
- e) follow the judicial procedure in all its stages;
- f) deliver basic goods and prescribed medication³³.

Portuguese citizens who have the economic means to repay the State for the amounts spent on their assistance shall sign a document stating the amount due and acknowledging their duty to reimburse (Article 41, n. 1, RC)³⁴. The written document is self-executing before any Portuguese Court (Article 41, n. 3, RC)³⁵.

No money will be charged for acts performed, upon request, by consular agents before local authorities or any other entity, when such acts are for the protection of Portuguese detainees (Article 10 Consular Fees Chart).

The Internal Guideline prescribes that the consular agent must, upon receiving information on the arrest or detention of a Portuguese citizen, inform the State Secretariat. This report must, within possible, include a full identification of the detainee, the name and address of family members or person responsible, information on whether these people shall be informed of the arrest, likely judicial charge, place of the arrest, name and address of the designated lawyer (if there is one), likelihood of bail and its possible amount, most likely judicial decision.

The Internal Guideline recommends that consular agents do anything in their power to guarantee that the International Law standards on the treatment of detainees are respected, or, at least, that the level of treatment is not inferior to the one granted to local citizens in similar circumstances.

The Internal Guideline admits that, upon request by the detainee or his legal representative, and within possible, the consular agent may assist the detainee in transmitting requests or petitions to local authorities, making sure that said requests and petitions receive adequate treatment and pressing, if necessary, for special treatment based on medical or humanitarian reasons.

³² This same provision is now Article 41, n. 1, of the Portuguese Consular Regulation of 2009.

³³ This same provision is now Article 41, n. 2, of the Portuguese Consular Regulation of 2009.

³⁴ This same provision is now Article 42, n. 1, of the Portuguese Consular Regulation of 2009.

³⁵ This same provision is now Article 42, n. 3, of the Portuguese Consular Regulation of 2009.

According still to the Internal Guideline, if the State in question offers free judicial assistance, the consular agent shall inform the detainee and help him in obtaining said judicial assistance. When legal representation must be paid, the consular agent may perform as a channel to receive the money from family members or other people responsible for the detainee, providing them with the necessary details (the same applies for the payment of bails or fines). **In very exceptional circumstances, the State Secretariat may authorize the Consular Post to pay for legal representation, bail or fines.**

4.5. Assistance to victims of violent crime

In the absence of a specific provision on assistance to victims of violent crime, the legal basis to provide such assistance is the general norm of Article 40, n. 1, paragraph a) RC, which grants support to Portuguese citizens in need. Article 40, n. 1, paragraph h) RC, adds that consular missions shall provide the possible and adequate social, legal and administrative support in order to guarantee the defense and protection of the rights of Portuguese citizens.

Portuguese citizens who have the economic means to repay the State for the amounts spent on their assistance shall sign a document stating the amount due and acknowledging their duty to reimburse (Article 41, n. 1, RC)³⁶. The written document is self-executing before any Portuguese Court (Article 41, n. 3, RC)³⁷.

The Internal Guideline prescribes that **victims of crime or assault shall be helped by consular agents in obtaining legal and medical assistance, in reporting the facts to the local authorities and, if necessary, in writing the petitions and filling in the forms.** An internal report of the incident must be filed.

According to public officials interviewed, the practice so far has been to meet with the local authorities, upon the occurrence of violent crimes against Portuguese citizens (cases in South Africa and Venezuela), and stress before them the need for a stronger protection of the Portuguese communities targeted.

In 2008, 16 Portuguese citizens who were victims of violent crimes in South Africa were granted financial support, through the Portuguese Consulate General in Johannesburg, in order to pay for specialized psychological assistance.

4.6. Relief and repatriation of distressed citizens

Portuguese consular missions provide help and assistance in cases of natural disasters or severe disturbances in public order, by adopting the measures deemed appropriate in face of the events, like the **evacuation** of Portuguese citizens whenever necessary [Article 40, n. 1, paragraph c) RC].

In case there is the need to evacuate Portuguese citizens (either because of war, violent political crisis, natural disaster or severe disturbances to public order), consular missions shall adopt any **prompt measures deemed adequate to the situation, namely:**

- a) contact the people and inform them of the behavior to be adopted in such circumstances;
- b) inform them of the existence and location of refuges and gathering spots;
- c) assess the logistic needs demanded by the situation and obtain the means for its satisfaction;

³⁶ This same provision is now Article 42, n. 1, of the Portuguese Consular Regulation of 2009.

³⁷ This same provision is now Article 42, n. 3, of the Portuguese Consular Regulation of 2009.

- d) seek the support and cooperation of entities capable of lending help;
- e) provide and protect the exit out of danger zones;
- f) cooperate with other competent services in the evacuation procedures (Article 42 RC)³⁸.

The expenses made with evacuation procedures are paid by the State (Article 43 RC)³⁹.

In emergency cases, like natural disasters or civil and military unrest, the practice has been to provide assistance to the families of Portuguese/Union citizens as a whole, irrespective of the nationality of some of its members. That was, for instance, the case in Lebanon (2006).

The response to emergency situations, by Portuguese consular missions, has been prompt and efficient.

4.6.1. Natural disasters

Portuguese consular missions provide help and assistance in cases of natural disasters by adopting the measures deemed appropriate in face of the events, like the evacuation of Portuguese citizens whenever necessary [Article 40, n. 1, paragraph c) RC].

In case there is the need to evacuate Portuguese citizens due to a natural disaster, consular missions shall adopt any prompt measures deemed adequate to the situation, namely a) contact the people and inform them of the behavior to adopt in such circumstances; b) inform them of the existence and location of refuges and gathering spots; c) assess the logistic needs demanded by the situation and obtain the means for its satisfaction; d) seek the support and cooperation of entities capable of lending help; e) provide and protect the exit out of danger zones; f) cooperate with other competent services in the evacuation procedures (Article 42 RC).

The expenses made with evacuation procedures are paid by the State (Article 43 RC)⁴⁰.

Following the January 12, 2010, earthquake in **Haiti**, the consular assistance was provided by the Portuguese Embassy in Cuba, which is responsible for the Portuguese Diplomatic and Consular mission in Haiti. The Consular Emergency Office kept two telephone lines opened 24/7 for information on family and friends in Haiti. There were only 14 Portuguese citizens in Haiti at the time of the earthquake and only one suffered minor injuries; a Portuguese reporter covering the events was also injured at a later date. Four Portuguese citizens were evacuated, of whom three through cooperation with the Spanish Consular Services. After the earthquake the Secretariat for Portuguese Communities issued an alert advising against any visits to Haiti⁴¹.

³⁸ The Portuguese Consular Regulation of 2009 gives a different treatment to this matter. Consular missions shall adopt a number of prompt measures whenever there is a war, a violent political crisis, severe disturbances to public order, natural disaster or any other calamity, risk or emergency situation, and not only when there is the need to evacuate people (Article 44, n. 1). The measures listed in the several paragraphs of Article 44, n. 1, correspond, with minor differences, to the ones listed in Article 42 RC1997. A separate provision (Article 45 RC2009) deals with evacuation procedures. Whenever there is the need for an evacuation, consular missions will adopt the measures prescribed for emergency situations (Article 44 RC2009) and cooperate with all services, national and foreigner, with competence in the field of evacuation procedures. Whenever possible, evacuation operations shall proceed according to previously defined contingency plans (Article 45, n. 2 RC2009).

³⁹ This same provision is now Article 45, n. 3, of the Portuguese Consular Regulation of 2009.

⁴⁰ This same provision is now Article 45, n. 3, of the Portuguese Consular Regulation of 2009.

⁴¹ <http://www.secomunidades.pt/web/guest/listapaises/HA>

4.6.2. Terrorist acts

In the absence of a specific provision, the occurrence of terrorist attacks will fall under the category of “**severe disturbances in public order**”⁴². According to Article 40, n. 1, paragraph c) RC, Portuguese consular missions provide help and assistance in cases of severe disturbances in public order, by adopting the measures deemed appropriate in face of the events, like the evacuation of Portuguese citizens whenever necessary.

In case there is the need to evacuate Portuguese citizens, due to severe disturbances to public order, consular missions shall adopt any prompt measures deemed adequate to the situation, namely a) contact the people and inform them of the behavior to be adopted in such circumstances; b) inform them of the existence and location of refuges and gathering spots; c) assess the logistic needs demanded by the situation and obtain the means for its satisfaction; d) seek the support and cooperation of entities capable of lending help; e) provide and protect the exit out of danger zones; f) cooperate with other competent services in the evacuation procedures (Article 42 RC).

The expenses made with evacuation procedures are paid by the State (Article 43 RC)⁴³.

4.6.3. Pandemics

In the absence of a specific provision, assistance in cases of pandemics can be legally based in Article 40, n. 1, paragraph a) RC, which states the duty, on the part of consular missions, to assist Portuguese citizens in need. Article 41 RC applies, meaning that the Portuguese citizens who have the economic means to repay the State for the amounts spent on their assistance shall sign a document (self-executing before any Portuguese Court) stating the amount due and acknowledging their duty to reimburse.

The Consular Regulation of 2009 adopts a broader phrasing that may very well encompass pandemics scenarios, and allow for evacuation procedures. Article 44, n. 1 RC2009 prescribes that in case of calamity, risk or emergency situations, consular missions shall adopt prompt measures deemed adequate to the situation, namely a) contact the people and assess their needs; b) inform them of the behavior to adopt and of the existence and location of refuges and gathering spots; c) assess the logistic needs demanded by the situation and obtain the means for its satisfaction; d) seek the support and cooperation of entities capable of lending help; e) provide and protect the exit out of danger zones. If an evacuation is deemed necessary, the consular missions will make the necessary arrangements and the expenses will be paid by the State (Article 45, n. 3 RC2009).

4.6.4. Military conflicts

Portuguese consular missions provide help and assistance in cases of severe disturbances in public order, by adopting the measures deemed appropriate in face of the events, like the evacuation of Portuguese citizens whenever necessary [Article 40, n. 1, paragraph c) RC].

In case there is the need to evacuate Portuguese citizens (either because of war, violent political crisis or severe disturbances to public order), consular missions shall adopt any prompt measures deemed adequate to the situation, namely a) contact the people and inform them of the behavior to adopt in such circumstances; b) inform them of the existence and location of refuges and gathering spots; c) assess the logistic needs

⁴² The Portuguese Consular Regulation of 2009 adopts a broader phrasing, to include “calamity, risk and emergency situations” (Article 44).

⁴³ This same provision is now Article 45, n. 3, of the Portuguese Consular Regulation of 2009.

demanded by the situation and obtain the means for its satisfaction; d) seek the support and cooperation of entities capable of lending help; e) provide and protect the exit out of danger zones; f) cooperate with other competent services in the evacuation procedures (Article 42 RC).

The expenses made with evacuation procedures are paid by the State (Article 43 RC)⁴⁴.

4.6.5. Financial advances

Article 40, n. 1, paragraph a) RC, prescribes, in general, that **consular missions shall provide assistance to Portuguese citizens in need, but such assistance does not encompass financial advances except in very rare situations.**

In cases of repatriation, consular missions may pay for food, clothing, lodging, medical treatments, urban transportation, return tickets and necessary documentation, but all these expenses are subject to reimbursement upon arrival in Portugal.

When Portuguese citizens lack the financial means to pay for their return trip to Portugal, consular missions will make the necessary arrangements for their repatriation [Article 46, n. 1, paragraph a) RC]⁴⁵. Repatriation, however, will only take place if that is the express wish of the person to be repatriated or his/her representative (Article 46, n. 4 RC)⁴⁶. The transportation shall be made by the most convenient means, considering time and money (Article 46, n. 5 RC)⁴⁷. Article 41 RC⁴⁸ applies, meaning that the Portuguese citizens who have the economic means to repay the State for the amounts spent on their assistance shall sign a document (self-executing before any Portuguese Court) stating the amount due and acknowledging their duty to reimburse. The practice has been for the consular missions to **retain the citizen's passport** as an additional guarantee that the reimbursement will be made upon arrival in Portugal.

4.7. Consular fees

The fees applied to the practice of consular acts are defined by a Consular Fees Chart (*Tabela de Emolumentos Consulares*), revised by Ordinance 710/2007, 11 June.

The consular registration is free of charge (Article 1 CFC). The fees for the issuance of an electronic passport vary between 50 and 70 € (Article 3 CFC). The fee for the issuance of an Emergency Travel Document is 10 € (Article 4, n. 2 CFC). The fee for the issuance of a temporary passport is 120 €, but it will be waived whenever the need to exit the foreign country and the impossibility to use the common passport are due to a catastrophe, war, public order disturbances or other similar reasons (Article 4, n. 3 and 4, CFC). The fee for the intervention of a consular agent, before the local authorities or other entities, upon request by the interested party, is 17 € (Article 6 CFC). The fees for informations requested concerning the whereabouts of Portuguese citizens or other matters vary between 7 and 28 € (Article 7 CFC). The fee for the storage, administration and liquidation of assets is 100 € (Article 29 CFC); but it will be waived whenever the total value of the assets is less than 500 € and when the storage is due to an accident (Article 37 CFC). The fees for acts performed by consular agents outside the consular

⁴⁴ This same provision is now Article 45, n. 3, of the Portuguese Consular Regulation of 2009.

⁴⁵ The Portuguese Consular Regulation of 2009 demands that the lack of financial means be *demonstrated* – Article 43, n. 1, paragraph a).

⁴⁶ This same provision is now Article 43, n. 4, of the Portuguese Consular Regulation of 2009.

⁴⁷ This same provision is now Article 43, n. 5, of the Portuguese Consular Regulation of 2009.

⁴⁸ Article 42 of the Portuguese Consular Regulation of 2009.

chancellery vary between 39 and 68 € (Article 30 CFC). The fee for the licence for the transportation of corpse is 28 € (Article 78 CFC).

4.8. Reimbursement of the assisting State

In cases of **repatriation, consular missions may pay for food, clothing, lodging, medical treatments, urban transportation, return tickets and necessary documentation, but all these expenses are subject to reimbursement upon arrival in Portugal.**

The Portuguese citizens who have the economic means to repay the State for the amounts spent on their assistance shall sign a document (self-executing before any Portuguese Court) stating the amount due and acknowledging their duty to reimburse (Article 41, RC)⁴⁹. The practice has been for the consular missions to **retain the citizen's passport** as an additional guarantee that the reimbursement will be made upon arrival in Portugal.

4.9. Case studies, in particular problematic practices

No data available.

5. Emergency travel document (ETD)

Portuguese consular missions may issue passports and other travel documents, in accordance with national, European and international law (Article 48 RC). All consular missions are equipped with ETDs.

Honorary consuls are not competent to issue travel documents (Article 35, n.2 RC)⁵⁰.

Practice is working sufficiently well; no problems are reported.

In 2007, during the Portuguese presidency of the European Council, two ETDs were issued by the Portuguese consular mission in Montevideo, on behalf of Finnish citizens. According to the consular agents in Montevideo, the request was made via the Finnish Embassy in Buenos Aires, under Article 20 EC-Treaty. That same year, another ETD, also on behalf of a Finnish citizen, was issued by the Portuguese consular mission in Beira, Mozambique.

6. Relevant diplomatic protection

The Portuguese Constitution does not directly establish a basic right to diplomatic protection, although such right may be considered to be implicit in Article 14 CRP where it is stated that Portuguese citizens abroad benefit from the protection of the State for the exercise of their rights.

In principle, diplomatic protection is not extended to family members who are not nationals, but the practice has been to provide assistance to the families of Portuguese citizens as a whole, irrespective of the nationality of some of its members, in emergency situations.

⁴⁹ This same provision is now Article 42 of the Portuguese Consular Regulation of 2009.

⁵⁰ This same provision is now Article 25, n. 2, of the Portuguese Consular Regulation of 2009.

7. Exercise of consular functions for expats

Portuguese consular missions provide civil registry and notary services (Articles 51 to 57 RC). They may issue passports and other travel documents (Article 48 RC), as well as identity documents for the Portuguese citizens who reside in their respective areas of jurisdiction (Article 49 RC)⁵¹ and certificates attesting to facts or situations necessary to secure the rights and legitimate interests of Portuguese citizens (Article 50 RC). The consular missions are also competent to conduct electoral registrations, to supervise the regularity of the electoral processes and to promote the exercise of electoral rights by the Portuguese citizens (Article 68 RC). The consular missions provide assistance and protection to the Portuguese citizens in need (elderly, indigents and other persons in situations of social exclusion); defend the social rights of the Portuguese citizens abroad; give incentives to the professional training of Portuguese workers; create Portuguese schools and courses; promote the integration of Portuguese students; etc. (Article 66 RC)⁵².

8. Summary

Portugal is a party to the most important international treaties on consular relations and has concluded several bilateral treaties, as well as a multilateral treaty within the Lusophone Community CPLP, on the matter.

The internal legal basis for consular services is the Portuguese Consular Regulation, adopted by Decree-Law 381/97, 30 December, and recently replaced by Decree-Law 71/2009, 31 March.

Assistance to EU citizens is provided according to Article 23 TFEU. So far, some but not extensive practice exists.

The Consular Regulation provides for the consular assistance of EU citizens, but not for the support of family members who are not nationals of a Member State, although the practice (in emergency situations, at least) has been to assist all family members, irrespective of their nationality.

Among the bilateral treaties concluded by Portugal on consular cooperation, only the treaty with the Russian Federation (2001) makes express reference to the possibility of Portuguese consular officials to act on behalf of Union citizens who are nationals of a Member State not represented in the Russian Federation territory. It does extend consular protection to family members who are not nationals of a Member State.

9. List of important documents

Constitutional provisions

1.

Title: Constituição da República Portuguesa - Artigo 14

Date: 02/04/1976

English title: Constitution of the Portuguese Republic – Article 14

International treaties and related national instruments

2.

⁵¹ Article 49 of the 2009 Consular Regulation allows the consular missions to receive and instruct requests for the issuance of citizen identity cards, without restricting the possibility to the Portuguese citizens residing in the consular missions' respective areas of jurisdiction.

⁵² Article 66 of the 2009 Consular Regulation does not mention the creation of portuguese schools and courses, nor the promotion of the academic integration of Portuguese students, but adds to the list of social functions to be performed by the consular missions the promotion of the social, cultural, economic and political integration of the Portuguese citizens in their host societies.

Title: Acordo de Cooperação Consular entre os Estados Membros da Comunidade de Países de Língua Portuguesa, Lisboa, 24 Julho 2008

Publication reference: Not yet published

Entry into force: Not yet in force

English title: Consular Cooperation Agreement between the Member States of the Portuguese Speaking Countries Community, Lisbon, 24 July 2008

Summary: Cooperation in terms similar to Decision 95/553/EC, so that Portuguese consular missions will grant consular protection to citizens of other CPLP Member States in third countries where said CPLP Member States are not represented

3.

Title: Acordo de Cooperação Consular entre o Governo da República Portuguesa e o Governo da República Democrática de Timor Leste, Lisboa, Março de 2003

Publication reference: Not yet published

English title: Agreement on Consular Cooperation between Portugal and Timor Leste, Lisbon, March 2003

Summary: Sets the basic terms of consular cooperation

4.

Title: Resolução da Assembleia da República n.º 23/2003, de 1 de Abril [Convenção Consular entre a República Portuguesa e a Federação da Rússia, Moscovo, 26 Outubro 2001]

Publication reference: Diário da República, I-A, n.º 77, 01/04/2003

Entry into force: 07/05/2003

English title: Parliament Resolution 23/2003, 1 April [Consular Convention between Portugal and Russian Federation, Moscow, 26 October 2001]

Summary: Sets the basic terms of consular cooperation; article 36 prescribes that Portuguese consular officials may act on behalf of Union citizens who are nationals of a Member State not represented in the Russian Federation territory

5.

Title: Decreto n.º 19/2001, de 29 de Maio [Convenção Consular entre a República Portuguesa e a República Tunisina, Lisboa, 10 Maio 2000]

Publication reference: Diário da República, I-A, n.º 124, 29/05/2001

Entry into force: 31/05/2001

English title: Decree 19/2001, 29 May [Consular Convention between Portugal and Tunisia, Lisbon, 10 May 2000]

French title: Convention Consulaire entre la Republique Portugaise et la Republique Tunisienne

Summary: Approves, and publishes in Portuguese, French and Arabic, the Consular Convention between Portugal and Tunisia, signed in Lisbon, 10 May 2000.

6.

Title: Decreto n.º 37/99, de 28 de Agosto [Protocolo Adicional ao Acordo de Cooperação Consular entre a República Portuguesa e a República Federativa do Brasil para Protecção e Assistência Consular aos seus Nacionais em Terceiros Países]

Publication reference: Diário da República, I-A, n.º 227, 28/08/1999

English title: Additional Protocol to the Consular Cooperation Agreement between Portugal and Brasil for the Protection and Consular Assistance to its Nationals in Third Countries, Lisbon, 17 April 1999

Summary: Approves the Additional Protocol to the Consular Cooperation Agreement between Portugal and Brasil for the Protection and Consular Assistance to its Nationals in Third Countries, signed in Lisbon, 17 April 1999. The Protocol specifies the consular acts that may be performed on behalf of Brazilian or Portuguese citizens in third countries where a Brazilian consular mission or a Portugal Consulate does not exist.

7.

Title: Decreto n.º 26/98, de 10 de Agosto [Protocolo entre o Governo da República Portuguesa e a República da Guiné-Bissau sobre a Cooperação no Domínio da Representação Diplomática e Consular, Lisboa, 6 Fevereiro 1998]

Publication reference: Diário da República, I-A, n.º 183, 10/08/1998

English title: Decree 26/98, 10 August [Protocol between Portugal and Guinea-Bissau on Cooperation in the Field of Diplomatic and Consular Representation, Lisbon, 6 February 1998]

Summary: In countries where one of the two Parties does not have a diplomatic representation, the other will allow public officials from that State to perform their consular functions at its Embassy or Consular offices

8.

Title: Decreto n.º 16/98, de 30 de Junho [Protocolo Adicional ao Acordo de Cooperação Consular entre a República Portuguesa e a República da Guiné-Bissau para Protecção e Assistência Consular aos seus Nacionais em Terceiros Países, Lisboa, 6 Fevereiro 1998]

Publication reference: Diário da República, I-A, n.º 148, 30/06/1998

English title: Decree 16/98, 30 June [Additional Protocol to the Agreement on Consular Cooperation between Portugal and Guinea-Bissau for the Protection and Consular Assistance of their Nationals in Third Countries, Lisbon, 6 February 1998]

Summary: Specifies the consular acts that may be performed

9.

Title: Decreto n.º 39/97, de 29 de Julho [Protocolo entre a República Portuguesa e a República de Cabo Verde sobre a Cooperação no Domínio da Representação Diplomática e Consular, Praia, 18 Fevereiro 1997]

Publication reference: Diário da República, I-A, n.º 173, 29/07/1997

English title: Decree 39/97, 29 July [Protocol between Portugal and Cape Verde on Cooperation in the Field of Diplomatic and Consular Representation, Praia, 18 February 1997]

Summary: In countries where one of the two Parties does not have a diplomatic representation, the other will allow public officials from that State to perform their consular functions at its Embassy or Consular offices

10.

Title: Decreto n.º 3/96 de 17 de Abril [Acordo de Cooperação Consular entre a República Portuguesa e a República Federativa do Brasil para Protecção e Assistência Consular aos seus Nacionais em Terceiros Países, Lisboa, 20 Julho 1995]

Publication reference: Diário da República, I-A, n.º 91, 17/04/1996

English title: Decree 3/96, 17 April [Consular Cooperation Agreement between Portugal and Brazil for the Protection and Consular Assistance to its Nationals in Third Countries, Lisbon, 20 July 1995]

Summary: Sets the basic terms of consular cooperation

11.

Title: Decreto de Governo n.º 60/84 de 3 de Outubro [Convenção Europeia sobre Funções Consulares, Protocolo à Convenção Europeia sobre Funções Consulares Relativo à Protecção de Refugiados, Protocolo à Convenção Europeia sobre Funções Consulares Relativo às Funções Consulares em Matéria de Aeronáutica Civil]

Publication reference: Diário da República, I, n.º 230, 03/10/1984

English title: Government Decree No. 60/84 [European Convention on Consular Functions, Paris, 11 December 1967]

Summary: Approves for ratification and publishes, in Portuguese and French, the European Convention on Consular Functions, signed in Paris, 11 December 1967, as well as its additional Protocols concerning the protection of refugees and relating to consular functions in respect of Civil Aircraft.

12.

Title: Decreto n.º 99/82, de 26 de Agosto [Convenção Europeia sobre a Supressão da Legalização dos Actos Exarados pelos Agentes Diplomáticos e Consulares]

Publication reference: Diário da República, I, n.º 197, 26/08/1982

Entry into force: 14/03/1983

English title: Decree 99/82, 26 August [European Convention on the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular Officers, London, 7 June 1968]

Summary: Approves for ratification, and publishes in Portuguese and French, the European Convention on the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular Officers, open for signature in Paris, 11 December 1967

13.

Title: Decreto n.º 114/81, de 5 de Setembro [Acordo de Cooperação Consular entre a República Portuguesa e a República da Guiné-Bissau, Bissau, 24 Fevereiro 1979]

Publication reference: Diário da República, I, n.º 204, 05/09/1981

Entry into force: 24/02/1979

English title: Decree 114/81, 5 September [Agreement on Consular Cooperation between Portugal and Guinea-Bissau, Bissau, 24 February 1979]

Summary: Approves the Agreement on Consular Cooperation between Portugal and Guinea Bissau, signed in Bissau, 24 February 1979 setting the basic terms of consular cooperation

14.

Title: Decreto n.º 99/80, de 7 de Outubro [Protocolo Adicional ao Acordo de Cooperação Consular entre a República Portuguesa e a República de Cabo Verde, Lisboa, 30 Novembro 1979]

Publication reference: Diário da República, I, n.º 232, 07/10/1980

English title: Decree 99/80, 7 October [Additional Protocol to the Agreement on Consular Cooperation between Portugal and Cape Verde, Lisbon, 30 November 1979]

Summary: Introduces changes to the Agreement on Consular Cooperation regarding passports and visas

15.

Title: Decreto n.º 31/79, de 16 de Abril [Acordo Relativo à Trasladação de Corpos de Pessoas Falecidas]

Publication reference: Diário da República, I, n.º 88, 16/04/1979

Entry into force: 08/08/1980

English title: Decree 31/79, 16 April [Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973]

Summary: Approves for ratification, and publishes in Portuguese and French, the Agreement on the Transfer of Corpses, open for signature in Strasburg, 26 October 1973.

16.

Title: Decreto n.º 47/77, de 9 de Abril [Acordo de Cooperação Consular entre o Governo da República Portuguesa e o Governo da República de Cabo Verde, Lisboa, 21 Janeiro 1977]

Publication reference: Diário da República, I, n.º 83, 09.04.1977

English title: Decree 47/77, 9 April [Agreement on Consular Cooperation between Portugal and Cape Verde, Lisbon, 21 January 1977]

Summary: Approves the Agreement on Consular Cooperation between Portugal and Cape Verde, signed in Lisbon, 21 January 1977 setting the basic terms of consular cooperation

17.

Title: Decreto-Lei n. 183/72, de 30 de Maio [Convenção de Viena sobre Relações Consulares]

Publication reference: Diário do Governo, 30/05/1972

Entry into force: 13/10/1972

English title: Decree-Law 183/72, 30 May [Vienna Convention on Consular Relations, Vienna, 24 April 1963]

Summary: Approves for accession and publishes, in Portuguese and French, the Convention on Consular Relations, Vienna, 24 April 1963.

18.

Title: Decreto-Lei n.º 48 295, de 27 de Março de 1968 [Convenção de Viena Sobre Relações Diplomáticas]

Publication reference: Diário do Governo, 27/03/1968

Entry into force: 11/10/1968

English title: Decree-Law 48 295, 27 March 1968 [Vienna Convention on Diplomatic Relations, 18 April 1961]

Summary: Approves for accession, and publishes in Portuguese and French, the Convention on Diplomatic Relations, signed in Vienna, 18 April 1961.

19.

Title: Acordo de Cooperação Consular entre a República da Hungria e a República Portuguesa, Budapeste, 4 de Novembro de 2002

Publication reference: not available

Entry into force: 23/03/2005

English title: Agreement on Consular Cooperation between the Republic of Hungary and the Republic of Portugal, Budapest, 4 November 2002

Summary: Sets the basic terms of consular cooperation between the Republic of Hungary and the Republic of Portugal

National Legislation

20.

Title: Decreto-Lei n.º 71/2009. Regulamento Consular (2009)

Publication reference: Diário da República, I Série, n.º 63, 31.03.2009

Date: 31/03/2009

Entry into force: 01/04/2009

English title: Consular Regulation

Summary: Consular structure and organizational framework. Consular services – consular missions, consular inspection, personnel, privileges and immunities. Consular acts – consular protection functions, issue of documents, notary services, fees, consular registration; cultural, economic and social functions; nationality issues and electoral processes; reports. Consular cooperation within the European Union and the Lusophone Community.

21.

Title: Portaria n.º 710/2007. Tabela de Emolumentos Consulares

Publication reference: Diário da República, I Série, n.º 111, 11.06.2007

Entry into force: 12/06/2007

English title: Ordinance 710/2007. Consular Fees Chart

22.

Title: Decreto-Lei n.º 162/2006 de 8 de Agosto, Regulamento Consular (1997)

Publication reference: Diário da República, I, n.º 152, 08.08.2006

End of validity: 01/04/2009

English title: Decree-Law n. 162/2006, 8 August - Consular Regulation (1997)

Summary: The Decree introduces some changes to the 1997 Consular Regulation and republishes it in full.

Consular structure and organizational framework. Consular services – consular missions, consular inspection, personnel, privileges and immunities. Consular acts – consular protection functions, issue of documents, notary services, fees, consular registration; cultural, economic and social functions; nationality issues and electoral processes; reports. Consular cooperation within the European Union and the Lusophone Community.

23.

Title: Decreto n.º 45/97, de 3 de Setembro [Decisão dos representantes dos Governos dos Estados Membros relativa à criação de um título de viagem provisório]

Publication reference: Diário da República, I Série-A, n.º 203, 03.09.1997

English title: Decree No. 45/97, 3 September [Decision of the Representatives of the Governments of the Member States on the establishment of an emergency travel document]

Summary: Approves and publishes in Portuguese the Decision of the Representatives of the Governments of the Member States meeting within the Council of 25 June 1996 on the establishment of an emergency travel document (96/409/CSFP).

24.

Title: Decreto n.º 38/97, de 23 de Julho [Decisões Relativas à Protecção dos Cidadãos da União Europeia pelas Representações Diplomáticas e Consulares e respectivas medidas de aplicação]

Publication reference: Diário da República, I Série-A, n.º 168, 23.07.1997

English title: Decree n. 38/97, 23 July [Decisions Regarding Protection for Citizens of the European Union by Diplomatic and Consular Representations, and its implementation measures]

Summary: Approves and publishes in Portuguese the Decisions of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995: - Decision Regarding Protection for Citizens of the European Union by Diplomatic and Consular

Representations; - Decision on Implementation Measures for the Decision Regarding Protection for Citizens of the European Union by Diplomatic and Consular Representations.

Circulars, internal guidelines

25.

Title: Protecção Consular. Guia Interno publicado pelo Ministério dos Negócios Estrangeiros e pela Secretaria de Estado das Comunidades Portuguesas

Publication reference: Not published

English title: Internal Guideline edited by the Ministry of Foreign Affairs and the State Secretariat for Portuguese Communities

Case law

26.

Title: Supremo Tribunal de Justiça, Acórdão de 12 Fevereiro 2004

Publication reference: <http://www.dgsi.pt>

English title: Supreme Court Decision of 12 February 2004

Summary: Establishes a “duty to consular protection” while assessing the validity of the contracts based on which cash deposits were made by Portuguese citizens at the consular missions in Mozambique in the years after the country’s independence. However, the extent of consular protection provided to said citizens is not directly at stake in the decision.

27.

Title: Supremo Tribunal de Justiça, Acórdão de 13 Março 2008

Publication reference: <http://www.dgsi.pt>

English title: Supreme Court Decision of 13 March 2008

Summary: Concerns the validity of a testament made before a Consular official and elaborates on the Notary functions performed by Consulates and its respective requirements.

Websites

28.

Title: Secretaria de Estado das Comunidades Portuguesas

Publication reference: <http://www.secomunidades.pt>

English title: State Secretariat for Portuguese Communities

29.

Title: Diário da República

Publication reference: <http://www.dre.pt>

English title: Official Journal

30.

Title: Direcção Geral dos Serviços Informáticos

Publication reference: <http://www.dgsi.pt>

English title: Official Portuguese Case Law Database

31.

Title: Gabinete de Documentação e Direito Comparado

Publication reference: <http://www.gddc.pt>

English title: Comparative Law and Documentation Office



Romania - România (RO)

1. Introduction

This Report contains the legal framework and the national practice of Romania on consular and diplomatic assistance and protection as of 22 June 2010.

Romania can be considered as a Member State where comprehensive information can be found on the legal framework on consular and diplomatic protection.

The basis of the report is: consular treaty law, Romanian national law¹, textbooks² on consular practice in Romania, information available on the websites of the Romanian Ministry of Foreign Affairs³, of the Romanian Ministry of Justice⁴, and of several Romanian embassies, interviews with consular officials and the information transmitted by the Office of the Secretary General, the Consular Relations and Treaties Departments of the Romanian Ministry of Foreign Affairs.

It should be pointed out that sources on statistical data, cases and problems encountered by Romanian diplomatic missions and consular posts are not publicly available.

1.1. Terminology: National acronyms and definitions

Ministerul Afacerilor Externe (MAE): Romanian Ministry of Foreign Affairs

Curtea Constitutională a României (CCR): Romanian Constitutional Court

Buletinul Oficial: Official Bulletin

Monitorul Oficial: Official Journal

2. Legal framework

Romania's legal framework consists of multilateral and bilateral Treaties related to consular assistance and protection to which Romania is a party, obligations under the TFEU (ex-EC Treaty), secondary Union law, national legislation implementing the obligations flowing from the aforementioned international and European law, the Romanian Constitution⁵ and guidelines published by the Ministry of Foreign Affairs⁶.

¹ Available at <http://legislatie.just.ro/>

² R Besteliu, *Drept Internațional – Introducere în dreptul internațional public*, third ed., 2003, p. 186-187; Mazilu, Dumitru, *Diplomația. Drept diplomatic și consular*, Ed. Lumina Lex, București, 2009.

³ Available at <http://www.mae.ro/index.php?lang=en>

⁴ Available at <http://www.just.ro/>

⁵ The Constitution is in force since 8 December 1991. The Constitution of Romania of 1991 was amended and completed by the Law no 429/2003 on the revision of the Constitution of Romania, published in the Official Journal no 758 of 29.10.2003. The Constitution was approved by referendum on 18 and 19 October 2003 and it was republished by the Legislative Council according to Art. 152, in the Official Journal no 767 of 31.10.2003.

⁶ Guide on consular services. It is a guidance leaflet for all Romanians who are outside of the Romanian borders, Ghidul Consular ‘*In sprijinul romanilor din strainatate*’, available at http://www.mae.ro/poze_editare/2009.03.25_ghid_consular.pdf.

On the basis of **Art. 17⁷ of the Romanian Constitution**, Romanian citizens have a fundamental right to consular and diplomatic protection. The Article provides that *‘Romanian citizens while abroad shall enjoy the protection of the Romanian State and shall be bound to fulfill their duties, with the exception of those incompatible with their absence from the country.’*⁸

In the same vein, **Art. 4 of Law No. 248/2005⁹** concerning the regime of free movement of the Romanian citizens abroad provides for a **right of the Romanian citizens to diplomatic and consular assistance and protection from the Romanian diplomatic and consular missions.**¹⁰

2.1. International law

Romania is/is not a Party to the following multilateral conventions:

- Vienna Convention on Consular Relations: since 24 February 1972 (Decree No. 481 of 20 December 1971¹¹ published in the Official Journal No. 10/28.01.1972)¹²
 - o Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes: since 19.06.2007 (Law No. 190 of 19 June 2007 published in the Official Journal No. 425 of 26.06.2007)¹³
 - o Optional Protocol concerning Acquisition of Nationality, 24 April 1963: Romania is not a party
- Convention on Special Missions 21 June 1985: Romania is not a party
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80): Romania is not a party
- Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, entered into force on 10.02.1969: Romania is a party.

Romania is a Party to the following bilateral conventions:

- Consular Convention between Romania and the Republic of Armenia of 20/04/1994 entered into force on 17/11/1994;

⁷Article 17 is located under Title II ‘*Fundamental Rights, Freedoms and duties*’ of the Romanian Constitution.

⁸ Official translation in English of the Romanian Constitution, available on the public site of the Romanian Parliament - <http://www.cdep.ro/pls/dic/site.page?id=339&parl=2&idl=2>

⁹ Law No. 248/2005 published in the Official Journal No. 682 of 29.07.2005.

¹⁰ Moreover, starting with 1 December 2009, the EU Charter on Fundamental Right has equal legal force with the Founding Treaties and Romania is a full party without reservations. Therefore, Art. 46 of the EU Charter can be directly invoked by Romanians in relation to each of the Member States of the EU in order to receive diplomatic and consular protection from the other Member States of the Union while they are in a third State, and any of the citizens of the other Member States of the EU can invoke Art. 46 to ask from Romanian diplomatic and consular missions to provide them diplomatic and consular assistance and protection while they are in a third State. Art. 46 of the Charter on Fundamental Rights of the EU has extended the right to consular and diplomatic protection onto all citizens of the Union; see Zarys Prawa, in Jan Barcz (eds.) *Fundamental Rights Protection in the European Union*, 2009.

¹¹ Decret Nr. 481 din 20 decembrie 1971.

¹² At the moment of acceding to the Vienna Convention on consular relations, Romania made a political statement with regard to Arts. 74 and 76 arguing that these articles are not in conformity with the principle according to which multilateral treaties having an object and scope of interest for the entire international community have to allow all members of the international community to be a party to the Convention on consular relations. This is only a political statement, not a reservation, Romania is a full Party to the Convention.

¹³ Law no 490 of 19.06.2007 published in the Official Journal no 425 of 26.06.2007.

- Treaty of good understanding, collaboration and neighbouring between Romania and the Republic of Albania of 11/05/1994 entered into force on 26/04/1995;
- Consular Convention between Romania and the Republic of Belarus of 07/05/1993 entered into force on 15/04/1994;
- Treaty between Romania and China on Extradition of 01.07.1996 entered into force on 17/06/1998;
- Treaty of friendship and collaboration between Romania and the Czech Republic of 24/06/1994 entered into force on 28/05/1996;
- Consular Convention between Romania and Turkey of 06/07/1999 entered into force on 09/10/2000;
- Consular Convention between the Socialist Republic of Romania and Democratic People's Republic of Algeria of 28/10/1973 entered into force on 08/12/1979;
- Consular Convention between Romania and the Republic of Croatia of 19/05/1997 entered into force on 16/01/1998;
- Consular Convention between Romania and the Republic of Macedonia of 06/11/2002 entered into force on 20/02/2004;
- Consular Convention between Romania and the Russian Federation of 04/07/2003 entered into force on 08/10/2004;
- Consular Convention between Romania and the Libyan Arab Jamahiriya of 01/07/1993 entered into force on 16/11/1994;
- Consular Convention between the Socialist Republic of Romania and the Republic of Tunisia of 08/10/1977 entered into force on 17/07/1978;
- Consular Convention between the Socialist Republic of Romania and the United States of 05/07/1972 entered into force on 07/01/1973;
- Consular Convention between the Socialist Republic of Romania and the Republic of Cuba of 31/05/1971 entered into force on 29/05/1972;
- Consular Convention between the Socialist Republic of Romania and Democratic People's Republic of Korea of 2/11/1971 entered into force on 07/08/1972;
- Consular Convention between Romania and the Republic of Kazakhstan of 21/09/1998 entered into force on 29/04/1999;
- Consular Convention between Romania and Turkmenistan of the 16/11/1994 entered into force on 26/09/1995;
- Consular Convention between Romania and Georgia of 01/07/1998 entered into force on 23/04/1999;
- Consular Convention between Romania and Ukraine 03/09/1992 entered into force on 02/04/1993;
- Treaty regarding relations of good neighbouring and cooperation between Romania and Ukraine of 02/06/1997 entered into force on 16/07/1997.

In summary, Romania is a party to several **consular Conventions**. Some of the Consular Conventions concluded by Romania with the Member States of the Union before Romania's accession to the Union are still in force¹⁴. In addition to these

¹⁴ Hungary (Consular Convention between the Socialist Republic of Romania and the People's Republic of Hungary, of 28/11/1973 entered into force on 22/06/1974), France (Consular Convention between Romania and the French Republic of 18/05/1968, ratified by the Decree No. 1178/1968 modified by a subsequent Agreement of 30/03/1992; Convention between Romania and the French Republic on legal assistance in criminal matters and extradition, Paris, 5/11/1974, ratified by Decree no 78/1975), Austria (Consular Convention between the Socialist Republic of Romania and the Republic of Austria of 24/09/1970 entered into force on 2/08/1971), Belgium (Consular Convention between the Socialist Republic of Romania and the Kingdom of Belgium of 01/07/1970 entered into force on 16/12/1970), Bulgaria (Consular Convention between the Socialist Republic of Romania and Bulgaria of 18/01/1973

Consular Conventions, Romania concluded **Treaties of good understanding, collaboration and neighbouring and Treaties of friendship and collaboration** with several additional countries, such as: Albania, Czech Republic, Ukraine, Columbia, Republic of Cape Verde¹⁵.

Starting with 1968, Romania has concluded several Consular Conventions and Treaties of good understanding having consular relations provisions. All these Conventions and Treaties are previous to the Romania's accession to the Union and posterior to Romania's adhesion to the Vienna Convention on Consular Relations.

Romania is also a party to **bilateral Treaties on judicial assistance in civil, criminal and family cases** concluded with States outside the Union that are or not parties to the Hague Convention of 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters: Albania, Algeria, China, North Korea, Cuba, Egypt, Macedonia, Morocco, Moldova, Mongolia, Russia, Serbia, Syria, Tunisia, Turkey, Ukraine.

All these Agreements contain a provision giving the right to diplomatic and consular missions to transmit family, civil and criminal judicial or extra-judicial acts adopted by the authorities of one of the Contracting Parties to the citizens of the other Contracting Party¹⁶. They also provide the right for diplomatic and consular missions of the Contracting Parties to draw up a certificate attesting the financial situation of the citizens of the sending State in cases where they need the certificate in front of the authorities of the other Contracting Party.

The bilateral agreements with Egypt, Morocco, Moldova, Syria and Tunisia also provide for the right of the diplomatic and consular missions to certify the translation of acts needed by the citizens before the authorities of the other Contracting Party.

The bilateral Treaties with Albania and Moldova provide in addition that the diplomatic and consular offices have the right of representing the citizens of the sending State in family succession cases.

The bilateral Treaties with Albania and the States of Macedonia, North Korea and Moldova provide the right of the diplomatic and consular offices to participate in the process of adopting measures of preserving the goods of an open succession. They also have the right to ask for the change or annulment of the measure already taken and those measures that are to be taken to be postponed. These latter Treaties also stipulate that the diplomatic and consular offices have the right to receive the money levied as a result of selling the goods of a succession in case the heirs are not present in the territory of the Contracting Party where the succession proceedings were opened and there is also no mandatory to represent the citizens' interests.

The bilateral Treaty with Morocco is the only one to provide that the witnesses and experts called in a judicial proceeding, where a citizen of one of the Contracting Party is involved, have the right to ask the diplomatic or consular missions of the State of nationality of the citizen called before the court to reimburse their costs of travelling and staying in the Contracting Party for the duration of the proceedings for which they were called for.

entered into force on 1/06/1973), Italy (Consular Convention between the Socialist Republic of Romania and the Italian Republic of 08/08/1967 entered into force on 10/07/1968), Sweden (Consular Convention between the Socialist Republic of Romania and Sweden of 12/02/1974 entered into force on 22/05/1975).

¹⁵ Romania concluded in 1986 a General Agreement of cooperation on long term with the Republic of Cape Verde. Even if the name of the Agreement is different, the content is similar with that of the Treaties of good understanding, collaboration and neighboring and the Treaties of friendship and collaboration.

¹⁶ In the same line, see Art. 19 of the Government Decision no 760/1999, which provides that the transfer of judicial and extra-judicial acts can be made by way of diplomatic and consular transfer, if the international Treaties and Conventions to which Romania is a party do not provide otherwise.

2.2. Transposition of international law into national law

The relation between international and national law in the Romanian legal order is governed by the legal regime established by Arts 11, 20, 80 and 91 of the Romanian Constitution.

According to Arts 80 and 91, it is the President himself that concludes international Treaties. However, in the last years, he has delegated this power to the Government. The ratification of the Treaties can be done by the Parliament or by the Government depending on who has concluded the international Treaties¹⁷. The ratification of the Treaties is done by way of adopting a Law or a Government Decree that must be published in the Romanian Official Journal. Generally, a Law adopted by the Parliament for the ratification of a Treaty contains one single article, namely the one on ratification, whereby the State expresses its consent to be bound by the said international agreement. Once the Treaties are ratified by a Law or a Government Decree¹⁸, they will be integrated into the Romanian legal order and they will have the same legal force of the act adopting them. The Law usually does not contain any other provision on the delegation of power to the President necessary for the implementation of the international agreements¹⁹, nor any other additional provision which points to the need of implementing the international agreements, which is a sign of dualist legal order. Certain academics²⁰ have interpreted Art. 11(2) of the Romanian Constitution²¹ as an indication of the adoption of the dualist system by Romania, since the Article provides that, in order to become part of the Romanian legal order, the international Treaties have to be firstly ratified by the Parliament and ratification has been seen by these academics as the classical characteristic of a dualist system. While other academics²² have interpreted the same requirement of ratification by the Parliament laid down in Art. 11(2) of the Constitution as the consent of Romania to be bound by the said Treaty. Thus, according to the latter academic approach, international treaties are argued to be directly applicable and the Romanian legal order to be a monist one. Having in mind that the Law ratifying the Treaty usually contains only one article more or less framed in the following way: “Romania adheres to the [...]”²³ it can be concluded that the Romanian legal system may be seen as a monist system, since the ratification Law does not contain any additional provisions on the delegation of power or further steps required for the implementation of the international Treaty, as for example is the case of Italy.

¹⁷ Arts. 2, 19 of the Law no 590/2003 on Treaties.

¹⁸ According to Arts. 105 and 115 of the Romanian Constitution, **all Government Decrees have the same legal force as the Laws.**

¹⁹ As it is the case of Italy.

²⁰ I. Galea, *The relation between national law, community law and international law - a difficult triangle*, AUB no. 4/2007, p. 37-46; Grozavescu, *International Agreements in the legal orders of the candidate countries – Romania* in A. Ott and K Iglis (eds), *Handbook on European Enlargement, A commentary on European enlargement process*, T.M.C Asser Press, 2002, p. 309-320, R. Popescu, *The relationship between national law, EU law and international law in a multilevel governance system*, article available at http://www.federalism.ch/files/FileDownload/918/Popescu_web.pdf

²¹ Art. 11(2) of the Romanian Constitution: “*Treaties ratified by the Parliament, according to the law, are part of the national law.*”

²² C.L. Popescu, *Controlul constitutionalitatii tratatelor internationale*, in Journal 'DREPTUL', no 11/2005, p. 9-33; I. Deleanu, *Comentariu la Art. 11 in Constitutia Romaniei – comentata si adnotata* de M. Constatinescu, I. Deleanu, A. Iorgovan, I. Muraru, Vasilescu (eds), Monitorul Oficial, Bucuresti, 1992, p. 31, 32.

²³ The article in the original language : “România aderă la [...]” After which it follows the legal basis for the adoption of the respective Law: “Această lege a fost adoptată de Parlamentul României, cu respectarea prevederilor art. 75 și ale art. 76 alin. (2) din Constituția României, republicată.”

Probably, the only point of academic agreement concerns the international Treaties on fundamental human rights. Art. 20(2) of the Constitution establishes that international Treaties providing fundamental human rights take precedence over the national legislation, with the exception of the cases when the latter has more favourable provisions. The superior legal force of the international Treaties on fundamental human rights over the Romanian Laws can be seen as an indication of the monist system²⁴, however, by contrast to the well recognised²⁵ French and Dutch monist systems, the hierarchy established by the Romanian Constitution is not extended to all international Treaties, but only to those having provisions on fundamental human rights²⁶.

Based on the foregoing academic debate, on Arts 11, 20, 90 of the Romanian Constitution, the case law of the Romanian Constitutional Court and an analogy with the French and the Dutch clear monist systems, it can be argued that there is an academic agreement between the Romanian legal writers only as regards **international Treaties on fundamental human rights, which are seen as directly applicable**. If one does not accept the approach of the Rapporteur that the Romanian system is a monist system²⁷, as explained above, then even in the case of interpreting the Romanian system as a partial monist system, then the provisions of the international Treaties concluded by Romania on consular and diplomatic protection should still be seen as directly applicable based on the following interpretation. Even if in international law, the right to consular protection is not considered a fundamental right, while the right to diplomatic protection is not even a right of the individual but of the State, however **since, according to Art. 17 of the Romanian Constitution and Art. 4 of the Law No. 248/2005 consular protection and assistance is provided as a fundamental human right, the international Treaties concluded by Romania having provisions on consular protection and assistance should be interpreted as taking precedence over the Romanian national legislation**²⁸. As regards other international Treaties on consular relations, that do not have provisions on consular protection and assistance, they do not fall under the ambit of Art. 11(2) of the Romanian Constitution. These latter international Agreements will have the legal force of the act that implements them, and the principles of the application in time of Laws will apply, as they are laid down in Vienna Convention on the Law of the Treaties and national legislation. Usually, the principles of *lex poster derogat legi priori* and the immediate application of the Laws will govern the area. Consequently, as regards international Treaties on consular relations which do not have provisions on consular assistance or protection, there is no academic agreement on whether the method of their domestic implementation is a sign of a monist legal system. The fact that these Treaties do not have a superior legal status over the national laws has been interpreted as an argument in favour of a dualistic system while the content of the Law on the basis of which Romania adheres to this type of Treaty has been interpreted as a sign of a monist system being adopted by Romania.

²⁴ Similar to the French Constitution, see Arts. 53, 55 of the French Constitution.

²⁵ Steiner, Alston and Goodman, *International human rights in context; law, politics, morals*, Oxford University Press, 3rd ed., p. 1096, 1097.

²⁶ See Decisions of the Romanian Constitutional Court in Case no 139 of 14.12.1994, p. 6; Case no 104 of 3.10.1995; Case no 113 of 8.10.1996.

²⁷ C.L. Popescu, *Controlul constitutionalitatii tratatelor internationale*, in Journal 'DREPTUL', no 11/2005, p. 9-33; I. Deleanu, *Comentariu la Art. 11 in Constitutia Romaniei – comentata si adnotata* de M. Constatinescu, I. Deleanu, A. Iorgovan, I. Muraru, Vasilescu (eds), Monitorul Oficial, Bucuresti, 1992, p. 31, 32.

²⁸ According to the Romanian Constitutional Court international Treaties on fundamental human rights take precedence also over the Romanian Constitution, see Decision no 148/2003 published in the Official Journal No. 317 of 12.05.2003, Part I.

It has to be observed that the legal status of a national measure ratifying an international Treaty does not determine whether a domestic legal system is or not a monist or a dualist system. The determinant element is the content of the Law ratifying the international Treaty. As mentioned above, the Law has usually only one article which provides that Romania has adhered by this Law to the international Treaty. Therefore, according to the content of the Law ratifying an international Treaty, it can be concluded that the Romanian legal system is a monist legal system.

On the basis of Art. 11 of the Romanian Constitution, the Vienna Convention on Consular Relations became binding on Romania within 60 days from the moment of publishing in the Official Journal²⁹ the Law ratifying the Convention³⁰.

The above mentioned bilateral consular Conventions and Treaties having provisions on consular assistance or/and protection have been ratified by the Parliament by way of adopting a Law³¹. Usually the Law has a single article providing the ratification of the Treaty, Convention, or Agreement. Once ratified, the foregoing Treaties, Conventions and Agreements form an integral part of the Romanian legal order.

2.3. Implementation of European law into national law

The Court of Justice has repeatedly ruled that it considers the relationship between the national and Community law to be monist³². Therefore, Art. 23 TFEU (ex-Art 20 TEC) was directly applicable since it was part of what used to be Community law.

Decision 95/553/EC is a *sui generis* Decision³³, adopted by the Representatives of the Governments of the Member States acting within the Council in the format of a simplified agreement between the Member States. Therefore, Decision 95/553/EC was not directly applicable, but as decided by the Member States³⁴ it needed implementation by all the Member States of the Union. Romania implemented the Decision by adopting an executive act, Government Decision No. 868/2008 concerning the protection of EU citizens by diplomatic and consular missions published in the Official Journal No. 627, Part I, of 28/08/2008. The Government Decision reiterates in almost identical words the provisions of Decision 95/553.

²⁹ Published in B.Of. nr. 10 of 28.01.1972.

³⁰ Decree No. 481 of 20 December 1971. The legal regime governing the entry into force of the Vienna Convention on consular relations was established by an old Law, which was repealed. Currently, the entry into force of international Treaties concluded by Romania is governed by the Law no 590/2003 published in the Official Journal no 23 of 12/01/2004, Part I.

³¹ These Treaties, Conventions, Agreements are ratified by way of a Law and not Government Decree since they fall under the ambit of Art. 19(1)(a) of Law 590/2003.

³² Case C-6/64 *Costa v ENEL* [1964] ECR 585; H.G. Schermers, D.F. Waelbroeck, *Judicial Protection in the European Union*, Kluwer Law International, 6th ed., 2001, p. 160. Case 181/73, *R. & V. Haegeman v. Belgian State*, 1974 E.C.R. 449, where the ECJ ruled that an international agreement concluded by the EC under the EC Treaty forms an '*integral part of Community law*'; Case 104/81, *Hauptzollamt Mainz v. C.A. Kupferberg & Cie KG a.A.*, 1982 E.C.R. 3641, where the ECJ ruled that since international agreements concluded by the EC '*form an integral part of the EC legal system*', the Member States as well as the EC Institutions are bound by their provisions and individual litigants may rely on the provisions of such international agreements before national courts in the (then) Community. However, in Joined Cases C-402 & 415P, *Kadi & Al Barakaat Int'l Found. v Council & Commission*, 2008 E.C.R I-6351, the ECJ seems to adopt a dualist approach on the relation between international and European law, when the international law act does not comply with the general principles of Union law, which the fundamental human rights are part of.

³³ To be differentiated from decision adopted by the Council under the ex-Art 249(4) TEC.

³⁴ See Art. 8 of Decision 95/553/EC.

Summary of the Government Decision No. 868/2008

According to Art. 1 of the Government Decision No. 868/2008, citizens of EU Member States enjoy the consular assistance and protection of Romania, in the same conditions as it is exercised for the Romanian citizens, when they are located in the territory of a third country where there is: a) no permanent and accessible diplomatic mission or consular post; b) no accessible Honorary Consul of their own Member State or another Member State representing the former. The EU citizen requesting diplomatic or consular assistance from the Romanian missions or posts will have to prove his/her citizenship to one of the EU Member States with his/her valid passport or identity card. If the aforementioned documents have expired, been lost or stolen, any other valid proof of nationality may be accepted, if necessary by verification with the central authorities of the Member State of which the person concerned claims to be a national, or with the nearest diplomatic or consular representation of that State. Consular protection under the Government Decision includes: a) assistance in the case of death; b) assistance in the case of accident or serious illness; c) assistance in the case of arrest or detention; d) assistance to victims of violence; e) support and repatriation of EU citizens in need. With the exception of cases of extreme urgency, financial help or other expenditure cannot be allocated to an EU citizen requesting diplomatic or consular protection without the previous approval of the competent authorities of the State of which that citizen is a national, i.e., the Foreign Affairs Ministry or the nearest diplomatic mission. The applicant must undertake to repay the full amount of any financial advance or help and expenditure incurred, unless the authorities of the Member State of the applicant's nationality expressly waive this requirement. As it can be seen, the Government Decision No. 868/2008 maintains the exact wording of Decision 95/553/EC.

The other EU secondary measure of interest for consular assistance is **Decision 96/409/CSFP on the establishment of an emergency travel document**. In the same line as the above mentioned EC Decision, Decision No. 96/409/CFSP is also a *sui generis* Decision adopted by the Representatives of the Governments of the EU Member States meeting within the Council, which needs³⁵ implementation by the Member States. The fact that the Decision 96/409/CFSP has as a material legal basis an article located in the TEU - the part on the CFSP provisions, while Decision 95/553/EC has as a material legal basis an article located in the TEC, does not entail a significant legal difference as regards the legal force of these Council Decisions, since in the end they are both international agreements to which all of the EU countries that were member States at the moment of the Decisions' conclusion agreed on their adoption. The CFSP Decision has established a single format for all temporary travel documents issued to all EU citizens. **Romania has not implemented this Decision by way of a piece of legislation dedicated solely to its transposition within the internal legal order.** However, Romania has formally agreed, according to the rules of public international law to accede to both the EC and the CFSP Decisions by signing the Treaty of Accession to the EU and its Protocol *concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the EU*. According to Art. 3 (1) of the aforementioned Protocol, Romania acceded to both Decisions on the moment of signing the accession Treaty and the Protocol. As regards the EC Decision, Romania has taken the necessary implementing measures, however, as regards the CFSP Decision it has not taken the necessary formal implementing measures, although being bound by it at the international level by way of aforementioned Art. 3(1) of the Protocol of accession. Romanian is a dualist legal system as regards the CFSP Decision, therefore, this international agreement will not be of direct application until formal implementing measures are taken. In practice, the Romanian Ministry of Foreign Affairs made

³⁵ See Art. 2 of Decision 96/409/CSFP.

extensive reference to the CFSP Decision in regard to the evacuation of a Romanian citizen from Haiti who was no longer in possession of any identity documents³⁶. The information on issuance of temporary travel documents available on the site of the Ministry of Foreign Affairs also indicates that the Decision is closely followed. According to the formal reply of the Consular Relations Department of the Romanian Ministry of Foreign Affairs³⁷, all Romanian diplomatic missions and consular posts issue ETDs to all EU citizens who fulfill all the subsequent conditions:

- have lost, been stolen or destroyed the travel document or when their travel document is unavailable; *and*
- the EU citizen is located in the territory of a third country where there is no permanent and accessible diplomatic mission or consular post of his/her own Member State or another Member State representing the former; *and*
- if the State of origin of the requesting EU citizen has given its previous approval to the issuance of the ETD by the Romanian diplomatic mission or consular post.

The only authorised producer of ETDs in Europe is the State Poligraphic Institute from Italy.

2.4. National law

According to **Art. 17 of the Constitution**, the Romanian citizens, while abroad, shall enjoy the protection of the Romanian State. This article can be interpreted as providing a right to consular and diplomatic protection for the Romanian citizens. In the same line, **Art. 4(1) of Law No. 248/2005³⁸** clarifies the issue as it expressly provides that **the Romanian citizens have a right not only to diplomatic and consular protection but also a right to diplomatic and consular assistance given by the Romanian diplomatic and consular missions.**

However, there is no legal provision stipulating expressly the corollary general obligation of the Romanian diplomatic and consular officials to confer consular assistance and protection to Romanian citizens³⁹.

Art 4(2) of Law No. 248/2005 provides only that the Romanian diplomatic missions and consular posts have the obligation to offer support and assistance, in accordance to the law, to Romanian citizens who are in difficulty or ask for help to return in Romania, which is a limited obligation of assistance and protection. They also have the obligation to inform the Romanian citizens of every possible situation that could hinder their security or health.

The Consular Regulation⁴⁰ in conjunction with the Vienna Convention of consular relations and Government Decision No. 868/2008 provide a more detailed

³⁶ Press release available at <http://www.mae.ro/index.php?unde=doc&id=14736>

³⁷ Formal reply of the Consular Relations Department of the Romanian Ministry of Foreign Affairs no G5-1/11729 of 10.06.2010.

³⁸ **Law No. 248/2005 is primary legislation, adopted by the Parliament, an organic Law whose legal force is higher than any type of Law (ordinary) or Government Decision or Decrees**, see Art. 73 and 76(1) of the Romanian Constitution.

³⁹ The absence of such a provision in the Romanian law was also confirmed by the Department of Consular Relations of the Romanian Ministry of Foreign Affairs in an official reply, no G5-1/11729, dating from 10.06.2010.

⁴⁰ Government Decision No. 760/1999 *concerning the Consular Regulation* published in the Official Journal, Part I, no 468 of 27/09/1999. **It is secondary legislation adopted by the Government. The secondary legislation is binding on all Romanian public authorities and citizens, in case of conflict**

definition of consular assistance and protection and the element which distinguishes consular protection from consular assistance.

Consular assistance consists of an intervention from consular officials for the purpose of helping a Romanian or EU legal or natural person in a difficult situation, whose cause cannot be attributed to the authorities of the States of residence. Consular assistance includes *inter alia* paying visits, receiving, guiding and advising the Romanian and EU citizens on their problems as well as taking the necessary steps before the authorities of the State of residence (administrative organs, police, city hall, judicial authorities, etc).

Consular protection, on the other hand, requires that the cause of the difficult situation where the Romanian or EU citizens find themselves in is due to the breach of law by the authorities of the State of residence. The measures taken by consular officials aim at helping the citizens to obtain reparation of the damages caused by the foreign public authorities.

Government Decision No. 760/1999 concerning the Consular Regulation, establishes the duties of the consuls and other diplomatic officials, the limits of their powers, their responsibilities and sanctions, and **defines consular activity as the assistance and protection given for the purpose of protecting the rights and interests of the Romanian State, citizens, legal and natural persons while abroad in accordance with the international practice and within the limits of norms and principles of international law.** Some of the most relevant articles of the Government Decision are: **Art. 15**, which establishes the conditions when a consular official can intervene before the public authorities of the State of residence for the purpose of taking safeguarding and administrating measures for goods pertaining to the Romanian State or its citizens; **Art. 16** provides the conditions where the consular officials can exercise notary tasks; **Art. 17** stipulates the attributions of consular officials regarding the legal status of a individual; **Art. 19** provides the modalities of transferring the judicial and extra-judicial acts with the help of the consular officials; **Art. 21(1)** provides the right of the consular official to issue or extend the passports and the conditions in which they can exercise this competence.

Art 17 of the Romanian Constitution, Government Decision No. 868/2008 and Government Decision No. 760/1999 are the specific legislation on consular assistance and protection, **several other legislation governing other fields contain a few other provisions regarding consular assistance and/or protection:**

- **Law No. 248/2005** concerning the regime of free movement of the Romanian citizens abroad provides in Art. 4 the right of the Romanian citizens to diplomatic and consular protection and assistance from the Romanian diplomatic and consular missions;
- **Law No. 302/2004**⁴¹ on international judicial cooperation in criminal cases provides in Art. 124(3) that consular officials, in alternative to judicial organs, have the competence to ask the Romanian citizens located abroad whether they give their consent to serve the criminal sentence in another State than Romania;
- **Law No. 272/2004**⁴² concerning the protection and promotion of children rights provides in Art. 19 an obligation of results for consular officials to inform the

between a Government Decision and a Law (regardless of its legal nature) the latter will take precedence.

⁴¹ Organic Law published in the Official Journal No. 594 of 1.07.2004 amended by Law No. 222/2008 published in the Official Journal No. 758 of 10.11. 2008.

⁴² Organic Law published in the Official Journal No. 557 of 23.06.2004.

Romanian National Authority for the Protection of the rights of children with regard to children of the Romanian citizens located abroad who are not accompanied by their parents or legal tutors or who are not supervised by any individual legally entitled to supervise them;

- **Law No. 156/2000**⁴³ provides in Art. 4 an obligation of means for the consular officials to make sure that the rights of the Romanian citizens as laid down in international Treaties, Conventions, Agreements regarding insurance for work accidents and professional diseases, will be respected by the authorities of the State of residence and also to ensure that these rights are respected by intervening before the local authorities of the States of residence in view of settling future disputes on these rights;
- **Government Decision No. 1443/2004**⁴⁴ regarding the repatriation and special protection methodology for the unaccompanied Romanian children reiterates the obligation set out in the aforementioned Art. 19 of Law No. 272/2004 and adds more obligations of information, identification of the Romanian children's parents or legal tutors and payment of expenditure involved in cases of repatriation of the Romanian children located abroad.

As regards **remedies** that Romanian citizens have against the refusal to provide consular protection or services by Romanian consular missions, Art. 26(2) of the Consular Regulation and Arts. 57-59 of Law No. 269/2003⁴⁵ *laying down the Statute of diplomatic and consular officials of Romania abroad* provide the specific relevant rules on responsibility of consular officials for fulfilling their duties, while the Civil Procedural Code and Law No. 554/2004⁴⁶ provide the general rules on the competent court to assess the complaint against the refusal to provide consular services. **Art. 26(2) of the Consular Regulation and Arts. 57 and 58 of the Statute provide that consular officials that breach these Laws or do not fulfil in good faith their professional duties can be held to account based on the disciplinary, administrative, civil, or criminal law, depending on the specific case.** The facts of the diplomatic and consular officials that attract their responsibilities and lead to sanctions based on the law will be assessed by the Council of Honour, who will make proposal to the Ministry of Foreign Affairs.

According to Art. 2(1) of the Civil Procedural Code, **Romanian citizens can submit a complaint against the refusal of a consular official to provide consular services before the court of second instance**⁴⁷ located in Bucharest. On the basis of Art. 2(2) of the Law No. 554/2004 *on administrative disputes* **the refusal of a consular official to provide consular assistance or protection is considered a unilateral administrative act which can be contested before the courts competent to review administrative claims** under the conditions set out in Arts. 7 and 10 of the above mentioned Law. Before going to the court, the applicant has to previously make a complaint against the refusal at the superior administrative authority of the consular official, thus the complaint will be addressed to the Romanian Ministry of Foreign Affairs. This previous

⁴³ Ordinary Law republished in the Official Journal No. 29 of 05.05.2009.

⁴⁴ **Government Decision, which**, according to the Romanian Constitution, **has an inferior legal force than the Law**, is published in the Official Journal No. 873/24.09.2004.

⁴⁵ Law 269/2003 *laying down the Statute of the diplomatic and consular officials of Romania abroad* published in the Official Journal No. 441 of 23.06.2003.

⁴⁶ Law 554/2004 published in the Official Journal No. 1154 of 7.12.2004 amended by Law 100/2008 published in the Official Journal No. 375 of 16.05.2008. Law 554/2004 was further amended during the years; the amendments history is available at http://www.cdep.ro/pls/legis/legis_pck.frame.

⁴⁷ The competent court is called '*tribunal*' which is a court of second instance.

administrative complaint is a compulsory procedural requirement before going to the administrative court. In case the MFA does not give redress to the applicant's complaint, then the latter can go before the administrative court in the conditions described above. The authority to respond before the court for the actions of the consular officials will be the Ministry of Foreign Affairs, which, in case it is unsuccessful, can recoup the costs of the proceedings and of the damages paid to the applicant from the diplomatic or consular official brought before the court. In addition to the above mentioned possibility of redress, a Romanian citizen can file a complaint before the Ombudsperson on the basis of the Constitution which envisages consular protection as a fundamental right of the Romanian citizens.

There is scarce case law on the rules on consular protection and assistance. On the site of the Tribunal of Bucharest, which is the competent court to review complaints against the refusal of a consular official to provide consular services, there is only one case related to consular services⁴⁸. In this case, the Court found the Department of Consular Relations within the Romanian Ministry of Foreign Affairs guilty of having breached Law No. 544/2001 on the communication of information of public interest by not answering to the request of the applicant, a Romanian citizen. Other relevant case law, although not directly connected with consular assistance or protection, and still scarce, has developed in regard to visas, and also, exceptionally, to diplomatic and consular immunities (especially the waiving of immunity for criminal offences committed by consular officials or diplomats)⁴⁹.

2.5. Documentation of consular protection

A Romanian national compilation of consular practice containing general information on the role and services that Romanian diplomatic and consular missions can exercise in third countries has been included in a **Consular Guide book**. The Foreign Affairs Ministry has made public on 14.07.2009 the third edition of the Consular Guide book *'In support of Romanians who are abroad'*⁵⁰ which aims at informing the Romanian citizens who travel for reasons of tourism or work of the possible dangerous, difficult situations which they may find themselves in, while being abroad. This document deals specifically with advices to travelers and with what a Romanian embassy or consulate can or cannot do with regard to consular services. It has three chapters: General Information, Consular Assistance and Conditions for travelling. The first two chapters provide the modalities and the fields where consular assistance is given as well as the limits of the consular assistance. The last chapter informs on the conditions for travelling and staying in the EU Member States and third countries. As regards the fields where consular assistance can be given, the Guide book divides them in two categories: normal situations (such as issuing, on request, of temporary travel documents, changing identity documents, issuing legal status acts: certificate of birth, of marriage or of death, notary services: authentication of acts, helping the Romanian citizens with obtaining judicial and extra-judicial acts from Romania, assistance with re-obtaining/ renunciation of the Romanian citizenship) and extreme/urgent cases (arrests, accidents, natural disasters).

⁴⁸ Case 45765/3/2009 of 12.02.2010, available at

http://www.tmb.ro/dosare_ecris.php?id_dosar=300000000298586

⁴⁹ For instance, the recent case of the diplomat Silviu Ionescu, charged by Romania's Prosecutor's Office to the High Court of Cassation and Justice for manslaughter, unauthorized departure from the accident site and misrepresentation (see press release: <http://www.mae.ro/index.php?unde=doc&id=15378>)

⁵⁰ Available at <http://lisabona.mae.ro/index.php?id=33&lang=ro&id=88517>. The guide is also available in the CARE database.

The Guide book includes the right of EU citizens to enjoy diplomatic and/or consular protection from the Romanian diplomatic or consular missions where their State of nationality does not have a diplomatic or consular mission⁵¹.

The Conventions and international Treaties on consular relations signed by Romania are partially⁵² available on the legislative database of the Romanian Parliament⁵³.

*Revista Romana de Drept International*⁵⁴ is a Romanian journal containing articles on current issues in international affairs and evolution of public international law as viewed from the Romanian foreign policy perspective. It usually used to include extensive articles on the cases Romania has had before the International Court of Justice and other arbitral forums. However, there has not yet been published an article on consular assistance or problems encountered in consular practice.

Relevant legal literature can be found in:

- Mazilu, Dumitru, *Diplomația. Drept diplomatic si consular*, Ed. Lumina Lex, București, 2009;
- Dan Nastase, *Drept Diplomatic si Consular*, Ed. Fundatia de Maine, 2006;
- I M Anghel, *Dreptul diplomatic si consular*, Editura Lumina Lex, Vol. I si II, Bucuresti, 2002.

2.6. Information to citizens on consular protection

Information on consular protection that is easily accessible can be found firstly in the Consular Guide book *'In support of Romanians who are abroad'* available both on the site of the Foreign Affairs Ministry⁵⁵ and secondly, on the site of the Romanian diplomatic and consular missions⁵⁶.

Further information on what a consular official can or cannot do can be found on the individual sites of the Romanian diplomatic and consular missions⁵⁷.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

All Romania's bilateral Conventions on consular relations as well as the other bilateral Agreements having certain provisions on consular assistance and protection concluded with third countries date before Romania's accession to the EU. **So far, there are no amendments brought to these agreements providing the extension of the Romanian consular assistance and protection to all EU citizens.** These agreements do not include provisions protecting the Union citizens working and living in third countries, nor do they extend consular protection to Union citizens' family members who are not national of a Member State.

⁵¹ See Guide book on consular services, p. 4.

⁵² Some of the older international Treaties are not available online, also the content of some of the new Consular Convention are also not available, such as the Consular Convention with Croatia of 1997, however, this latter Convention can be found in the Official Journal of 13/16.01.1998.

⁵³ See http://www.cdep.ro/pls/legis/legis_pck.frame

⁵⁴ The journal is published by the Romanian department of the International Law Association.

⁵⁵ See http://www.mae.ro/poze_editare/2009.03.25_ghid_consular.pdf

⁵⁶ See for example the site of the Romanian Embassy in Moscow, <http://moscova.mae.ro/>, or Turkey, <http://ankara.mae.ro/>

⁵⁷ See for example the site of the Romanian Honorary Consulate in Florence, Italy - http://www.consolatodiromania.fi.it/consolato_ro.html; the site of the Romanian Embassy in Cape Town, http://capetown.aift.ro/index.php?option=com_content&task=view&id=5&Itemid=7

It has not been reported whether Romania has informed third countries of the practice of extending its protection to all Union citizens (Art 8 Vienna Convention on Consular Protection)⁵⁸. However, in case of need to provide consular assistance to an EU citizen, the Romanian consular or diplomatic missions will comply with the obligation to provide such services according to Decision 95/553/EC and the Government Decision 868/2008.

Romania does not extend consular protection to Union citizens' family members who are not national of a Member State⁵⁹.

The Ministry of Labor, Family and Social Protection has established bilateral relations with Ministries and other institutions holding responsibilities in the sphere of labor and social policies from the following third countries: Albania, Republic of Moldova, Azerbaijan, Egypt and Turkey and with other countries that are already members of the European Union: Bulgaria, Czech Republic, Slovenia, Bavaria, Belgium, Netherlands, Portugal⁶⁰.

Romania has not started negotiations on amending the agreements with third States in order to include provisions extending its consular protection and assistance to Union citizens' family members who are not nationals of a Member State.

3.2. Statistical data on consular practice

Romania does not make publicly available statistical data for consular assistance or protection given to Romanian or EU citizens. There is no data available online on the embassies' websites or on the Minister of Foreign Affairs website on Romanian consular practice.

According to the formal reply sent by the Consular Relations Department of the Romanian Ministry of Foreign Affairs on 10 June 2010, the diplomatic and consular missions of Romania in third States keep an evidence of the data on provided consular services which they periodically transmit to the Ministry of Foreign Affairs.

4. Consular protection in detail

Probably because Romania is a new Member State, no practical cases are available on consular protection of EU citizens and no Court decisions regarding consular protection of EU citizens have yet been taken. Only one case arose regarding the refusal of the Consular Relations Department of the Romanian Ministry of Foreign Affairs to answer to the request of information of a Romanian citizen. The case was reviewed by the Tribunal of Bucharest⁶¹.

⁵⁸ The Consular Relations Department of the Romanian Ministry of Foreign Affairs answered to the question whether the Romanian diplomatic and consular missions have informed the third States where they are located of the extension of the Romanian diplomatic and consular protection and assistance to all EU citizens in the following way: '*Romania can provide consular assistance to the EU citizens according to Art. 20 of the EC Treaty and the Decision 95/553/EC, published in the Official Journal of the European Communities, No. L 314 of 28.12.1995*' – formal reply no G5-1/11729 of 10.06.2010.

⁵⁹ Information obtained from interviews undertaken with consular officials. Furthermore according to the official letter sent by the Department on Consular Relations within the Romanian Ministry of Foreign Affairs, G5-1/11729 of 10.06.2010, consular assistance is given only to Union citizens on the basis of EC Decision 95/553/EC and implemented by Government Decision No. 868/2008.

⁶⁰ The Ministry of Labor, Family and Social Protection, <http://www.mmuncii.ro/ro/articole/0000-00-00/relatiile-bilaterale-cu-ministerele-si-institutiile-cu-responsabilitati-in-domeniul-muncii-si-politicii-sociale-din-alte-state-713-articol.html>

⁶¹ Case 45765/3/2009 of 12.02.2010, available at http://www.tmb.ro/dosare_ecris.php?id_dosar=300000000298586.

On the basis of Romanian national legislation, **the *ratione personae* scope of consular assistance and protection encompasses Romania's own nationals and the Union citizens**⁶².

As to **refugees**, Romania acceded to the Geneva Convention relating to the Status of Refugees in 07 August 1991⁶³. The specific Romanian legislation governing the field of rights and obligations of refugees and persons having subsidiary protection is Law No. 122/2006 and Government Decision No. 1251/06. The national legislation follows the regime established by the Geneva Convention, in the sense that **express provisions on attributions of the Romanian diplomatic and consular missions towards persons given the refugee status or subsidiary protection status by Romania refer only to travel document competences, no express mention of other consular services is made**. The Ministry of Foreign Affairs Guide on consular services provided to Romanian citizens abroad does not have any information on persons benefiting of international protection granted by Romania.

According to Art. 20(1)(a) of Law No. 122/2006, the beneficiary of the refugee status or subsidiary protection has the right to be issued a document for passing the border that is valid for a period of 1 year. On the basis of Government Decision No. 557/2006⁶⁴, Art. 2(a)(3), the aforementioned travel document is considered to be an electronic passport. Art. 5(5) of Government Decision No. 557/2006 stipulates that the issuing of electronic passport to the refugees and persons granted subsidiary protection by Romania can be done also abroad by the Romanian diplomatic missions and consular offices. In the same line, according to the information available on the site of the department of the Romanian Office of Immigration⁶⁵, from the Ministry of Internal Affairs, the Romanian diplomatic and consular missions have the competence of extending and re-issuing travel documents for refugees and persons granted subsidiary protection by Romania. Starting with 31.01.2010⁶⁶, the validity of the old travel documents issued to persons benefiting of international protection granted by Romania will no longer be extended, they will have to be changed with biometric travel documents. According to the Romanian Office of Immigration, at present not all Romanian diplomatic and consular missions are equipped to issue/extend biometric travel documents and for this reason, the only authority that is competent and equipped to issue biometric travel documents to refugees and persons having subsidiary protection are the regional centres of accommodation and procedures for asylum seekers located in Timișoara, Maramureș, Rădăuți, Galați, București and the Direction of Asylum and Integration from the Romanian Ministry of Internal Affairs. The Ministry of Internal Affairs is working on identifying technical solutions, which will enable the Romanian diplomatic and consular missions to issue travel documents to persons benefiting of a form of international protection granted by Romanian when they are located outside Romanian borders.

The requests of extending the travel documents have to be submitted 30 days, at maximum, before the expiry of the validity of the said document.

As to **stateless persons**, the [Government Emergency Decree No. 194/2002](#) recognizes **a right to consular assistance and protection given by the Romanian diplomatic and consular missions only to stateless person having a permanent residence in**

⁶² See the Government Decision no 868 of 20.08.2008.

⁶³ Romania became a party to the Geneva Convention by adopting the Law no 46/1991, published in the Official Journal No.148 of 17.07.1991 ratifying the aforementioned Convention.

⁶⁴ Government decision no 557/2006 has been modified by Government decision no 1566/ 25.11.2008 published in the Official Journal no 842/15.12.2008.

⁶⁵ See <http://ori.mai.gov.ro/detalii/pagina/ro/Documente-ce-se-elibereaz-solicitanilor-de-azil/95> (information available only in Romanian).

⁶⁶ See Government Emergency Decree no 107/2009 modifying and completing Law 248/2005 on the free movement of the Romanian citizens abroad published in the Official Journal no 688 of 13.10.2009.

Romania⁶⁷. Art. 120(2) of the Government's Emergency Decree, No. 194/2002, expressly provides that, **while abroad, stateless persons having a permanent residence in Romania have a right to consular assistance and protection given by the Romanian diplomatic and consular missions**. Art. 118 provides more specific rights to stateless persons having a permanent residence in Romania and the specific procedure for enjoying such rights. Therefore, if the stateless person is abroad and his/her travel document is lost or stolen, the Romanian diplomatic and consular missions will issue a new travel document, with the previous approval of the Romanian Office of Immigration (ROI), for the purpose of the stateless person return to Romania. On his/her return to Romania, the travel document has to be given to the nearest representation of the ROI from his/her residence. Art. 118(1)(b) refers to the specific situation of repatriation of stateless persons having a permanent residence in Romania, or of Romanian origin, on the basis of international agreements to which Romania is a party. The passport of the aforementioned persons will be issued by the Romanian diplomatic or consular missions abroad for the purpose of the stateless persons' repatriation.

As regards the situation of **individuals benefiting of long-term residence status**, Romania has implemented the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents by making amendments to Government Decree No. 194 of 2002⁶⁸ in order to reflect the provisions of the Council Directive. According to Art. 11(5) second paragraph of the Council Directive 2003/109/EC: *'Member States may also decide to grant equal treatment with regard to areas not covered in paragraph 1.'* Therefore, the Member States are free to decide whether they will grant or not their consular assistance and protection to citizens of third countries who enjoy in those Member States long-term residence status. Art. 75 of the Romanian Emergency Government Decree No. 194/2002, which provides the rights of individuals who received long-term residence status in Romania, does not include any provisions on the consular assistance and protection given by the Romanian diplomatic and consular missions to these long-term residents while located outside the Romanian borders. Thus, as long as there are no express provisions, the latter do not enjoy equal treatment with the Romanian citizens with regard to consular assistance and protection given abroad. Art. 118 of the Emergency Government Decree No. 194 stipulates a right of foreign citizens⁶⁹ to be issued a travel document only when located on the Romanian territory. On the basis of Art. 118(1)(a)(ii), the foreign citizen located on the Romanian territory who is no longer in the possession of a national passport and, who, due to objective reasons, cannot obtain a travel document from the diplomatic mission of his/her country of origin, can obtain a travel document from one of the territorial representations of the Romanian Office of Immigration. This travel document is valid for a period of 30 days, with the possibility to extend its validity for another period of 30 days.

The *ratione materiae* scope of the consular assistance and protection is, however, not the same for the Romanian citizens as for all the other EU citizens.

The material scope⁷⁰ of **the consular assistance and protection given to Romanian citizens** includes the issuing of emergency travel documents, exercise of notary and registry functions⁷¹, representation before the courts when the Romanian citizens are

⁶⁷ This article provides the conditions necessary to be fulfilled in order to obtain a permanent residence in Romania.

⁶⁸ Government Decree no 194 of 2002 on the regime of foreigners in Romania, republished in the Official Journal no 421/5.06.2008.

⁶⁹ Foreign citizens, that means not only long-term residents, but also short-term residents, and other foreign citizens legally residing on the Romanian territory.

⁷⁰ **The material scope of the Romanian citizens' right to consular assistance and protection is set out in the Treaties mentioned in [section 2.1](#) and in the national legislation provided in [section 2.4](#).**

⁷¹ Art. 16 of the Government Decision no 760/1999 on Consular Regulation.

not present in the State or they cannot defend their interests⁷², transmission of documents and dealing with requests for legal aid, certifying the consent of the detained/arrested Romanian citizen to be transfer in the State where he/she will serve a criminal sentence⁷³, protecting their interests in inheritance proceedings, exercise of guardianship by diplomatic and consular officials and the obligation of consular missions to contact the Romanian National Authority on Child Protection with regard to children of the Romanian citizens located outside the Romanian borders⁷⁴ who are unaccompanied by their parents, legal tutors or there are no persons located in that State where the child is found that are legally entitled to supervise them⁷⁵.

Under the Romanian national legislation, **the material scope of the consular protection that can be given to all Union citizens is set out only in the Government Decision No. 868/2008**: 1) assistance in cases of death; 2) assistance in cases of serious accident or serious illness; 3) assistance in cases of arrest or detention; 4) assistance to victims of violent crime; 5) the relief and repatriation of distressed citizens of the European Union. The diplomatic and consular officials of Romania have the legal capacity to register marriages between Romanian citizens and between a Romanian citizen and a foreign citizen, unless the law of the State of the foreign citizen does not allow it⁷⁶.

The attributions and powers of Honorary Consuls are more limited than those of the diplomats and consuls. The legal regime of the powers and attributions of Honorary Consuls is provided in the Vienna Convention on consular relations, the Government Decision No. 760/1999 and Law No. 269/2003 *on the statute of diplomatic and consular officials of Romania*. Accordingly, **they are not allowed to provide any consular services that requires the exercise of State attributions**⁷⁷, such as services connected with: citizenship, visas, passports, civil status, transfer of judicial and extra-judicial acts, collecting consular taxes for provided services⁷⁸. On the site of the Ministry of Foreign Affairs it can be found the network of the Honorary Consulates of Romania located abroad. This site provides the address, telephone, fax numbers, email and website (when available) of the Honorary Consulates as well as the name of the Honorary Consuls⁷⁹.

There is scarce case law on the rules for consular protection and assistance. Courts have dealt with cases on visas and asylum, and also, exceptionally, with diplomatic and consular immunities (especially the waiving of immunity for criminal offences committed by consular officials or diplomats)⁸⁰. In some cases, Courts have faced

⁷² There is, however, a limitation as regards what a diplomat or consular official can do in these situations. Their representation in these situation ends when the Romanian citizen finds a proxy to represent their interests before the court.

⁷³ This right is usually provided in the international Treaties concluded by Romania on assistance in criminal cases, see [section 2.1](#).

⁷⁴ This obligation of the consular missions applies to Romanian children located outside the Romanian borders, in and outside the EU, see Law no 274/2004 on promotion and protection of a child's rights.

⁷⁵ Art. 19 of Law no 274/2004.

⁷⁶ See more information at <http://www.mae.ro/index.php?unde=doc&id=5074&idlnk=3&cat=5>

⁷⁷ See Art. 25(2) of the Consular Regulation.

⁷⁸ More information on tasks and obligations of Honorary Consuls are available at <http://www.mae.ro/index.php?unde=doc&id=30868>

⁷⁹ Available at <http://www.mae.ro/index.php?unde=doc&id=310&idlnk=5&cat=6>

⁸⁰ For instance, the recent case of the diplomat Silviu Ionescu charged by Romania's Prosecutor's Office to the High Court of Cassation and Justice for manslaughter, unauthorized departure from the accident site and misrepresentation (see press release: <http://www.mae.ro/index.php?unde=doc&id=15378>).

claims in relation to civil and social rights as recognised in the Treaties concluded by Romania with third countries⁸¹.

So far there are no agreements concluded by Romania with other States on co-location of consular posts or burden sharing agreements under Art. 41 of Regulation 810/2009 establishing a Community Code on Visas (Visa Code)⁸².

4.1. Right to consular (and diplomatic) protection

On the basis of Art. 17 of the Romanian Constitution and Art. 4 of Law No. 248/2005, **Romanian citizens have a fundamental right to consular and diplomatic protection, Art. 4 of the Law 248/2005 also adds a right of the Romanian citizens to consular and diplomatic assistance from the Romanian diplomatic and consular missions.** Starting with 1st of December 2009⁸³, all Union citizens have a fundamental right to ask for diplomatic and consular protection from the Romanian diplomatic and consular missions in third States where the MS of which he/she is a national is not represented. The Romanian or EU citizen will have to prove his/her nationality with their passports or identity cards. If the aforementioned documents have expired, been lost or stolen, any other valid proof of nationality may be accepted, if necessary by verification with the central authorities of the Member State of which the person concerned claims to be a national, or with the nearest diplomatic or consular representation of that State.

As already seen above, Consular assistance has a different material scope than consular protection under the Romanian legislation ([section 2.4](#)).

4.2. Assistance in cases of death

The legal regime of consular assistance in cases of death is governed by the Consular Regulation and the Government Decision No. 868/2008 concerning the assistance given by the Romanian diplomatic and consular missions to EU citizens.

The Consular Regulation provides that the Romanian embassies and consular posts **assist and support the kin of the deceased Romanian citizen⁸⁴**. They can **register the death** of a Romanian citizen at the Romanian embassy or consular post and can **issue a Romanian death certificate⁸⁵** based on the death certificate issued by the local authorities and other documents required by the Romanian legislation. The Romanian consular and diplomatic missions can **offer information** to Romanian and EU citizens regarding the procedures that have to be followed in cases of death. They can provide **contacts** of undertakers that will deal with inhumation or the transport of the deceased body, however, they will not be responsible for the quality of the services provided by these undertakers. They can also **issue the death passport** necessary to the international transport of the deceased body.

The consular officials **cannot undertake legal investigations** in regard to the death of a Romanian citizen occurred in the territory of a third country. They **cannot pay the cost**

⁸¹ Such as with Turkey, however, these rights were mostly raised in the framework of asylum cases.

⁸² Regulation (EC) 810/2009 of the European Parliament and of the Council establishing a Community Code on Visas (Visa Code) OJ L 243, 15.9.2009, p. 1–58.

⁸³ At this date the Lisbon Treaty together with the Charter on Fundamental Rights of the European Union entered into force. Art. 46 of the Charter provides the right of the EU citizens to diplomatic and consular protection from other MSs then his/her State of origin as long as his/her State of origin does not have a consular or diplomatic mission. Romania is a full party to the Charter and did not make any reservations.

⁸⁴ Art. 14 of the Consular Regulation.

⁸⁵ See Art. 17(3) of the Consular Regulation.

of inhumation or cremation. In special and limited circumstances, the Romanian diplomatic or consular missions can pay for the repatriation of the deceased body, namely, when there is no possibility to bury the body in the third country and the relatives of the deceased do not have the financial means to pay the repatriation⁸⁶. They cannot pay the debts of the deceased person.

In case a relative of a deceased Romanian citizen is on the third State's territory, it will be his/her duty to inform the Romanian consular authorities as well as the authorities of the State of residence of this death. However, in case the Consulate is informed by the local authorities of one of their nationals' death, it is the Consulate that will then contact the family of the deceased person.

In both cases the Consulate shall carry out all the necessary procedures to register the death of a Romanian citizen at the competent⁸⁷ Romanian consular post.

Decision No. 868/2008 provides that the citizens of EU Member States enjoy assistance from Romania, in cases of death, in the same way as the Romanian citizens, when, in the territory of a third country where they are located, there is no permanent and accessible diplomatic mission or consular post or any relevant accessible Honorary Consul of their own Member State or another State representing the Standing. The Romanian diplomatic and consular mission who found out of the death of an EU citizen in a third country will inform the Romanian Ministry of Foreign Affairs and when it is possible also the nearest diplomatic mission or consular post of the State of origin of the deceased EU citizen.

4.2.1. Identifying and repatriating remains

Law No. 198/2008⁸⁸, the Consular Regulation and Government Decision No. 868/2008 provide a few guiding rules on the procedure of identifying and repatriating remains. The Romanian embassies or consular posts can **issue the death passport** necessary to the international transport of the deceased body.

The costs of any legal formalities (such as the death certificate) and the repatriation or burial of the body or ashes are borne by the family of the deceased or the insurance company (if any). In special and limited circumstances, the Romanian diplomatic or consular missions can pay for the repatriation of the deceased body, i.e., when there is no possibility to bury the body in the third country and the relatives of the deceased do not have the financial means to pay the repatriation⁸⁹.

In difficult situations such as natural disasters, publicly available information were made available on the site of the Ministry of Foreign Affairs and of the embassy in the territory of the country where the natural disaster occurred, informing the relatives of the deceased Romanian citizens how to proceed with the legal procedure to register the death and how to transfer the bodies⁹⁰.

No further information is publicly available on the site of the Romanian Ministry of Foreign Affairs.

⁸⁶ See Law no 198/2008 published in the Official Journal no 728 of 28.10.2008, Part I.

⁸⁷ The consular post that is competent to register the death of a Romanian citizen is the one in which jurisdiction the decease occurred.

⁸⁸ Law no 198/2008 on charged consular services and the handling fees levied at the diplomatic missions and consular posts of Romania abroad published in the Official Journal no 728 of 28/10/2008 amended by Law no 78/2010 published in the Official Journal no 307 of 11/05/ 2010.

⁸⁹ See Law no 198/2008 published in the Official Journal no 728 of 28.10.2008, Part I.

⁹⁰ See more on this at http://www.7est.ro/stiri/international/6104_romanii-morti-in-italia-repatriati-pe-cheltuiala-familiilor.html and <http://www.mae.ro/index.php?unde=doc&id=38786>

4.3. Assistance in cases of serious accident or serious illness

According to Art. 14 of the Consular Regulation, consular officials provide on request or on their own motion **assistance and protection** to Romanian citizens in cases of accidents or serious illnesses. Further details on what exactly a consular official can or cannot do are provided in the Ministry of Foreign Affairs (MFA) Guide on consular services⁹¹.

Accordingly, the consular officials **can contact** the family of the Romanian citizen, if requested, to inform them of the Romanian citizen medical situation and to transmit them of the latter's possible requests. They can **recommend hospitals** or other medical units that can provide the necessary services. If hospitalization is required for a longer period, the consular officials can **visit** the Romanian citizens if the latter ask for. If certain formalities are necessary for the transport in Romania of the Romanian citizen who has been in an accident or is serious ill, in special circumstances, the consular officials can help the Romanian citizens to fulfil these formalities. Consular officials can **recommend lawyers, local translators** that can represent the Romanian citizens before the local authorities in criminal or civil cases connected with the accident.

A consular official **cannot** do the following: 1) they can intervene in the benefit of the Romanian citizen only within the **limits of the local legislation** and only if having the consent and support of the authorities of the State of residence; 2) they **cannot pay the medical expenditure**; 3) they can pay the transport back to Romania only within the limits of Law No. 198/2008; 4) they **cannot intervene before the insurance company** in the name of the Romanian citizen in order to bring claims on his/her behalf; 5) they can provide accommodation in the Romanian embassy or the consulate, or pay the cost of accommodation at hotels only with the previous approval of the Ministry of Foreign Affairs; 6) they cannot **fulfil the obligations or pay the debts of the Romanian citizens** remained unpaid or un-fulfilled due to the accident or the serious illness; 7) they cannot **provide for legal representation or pay the judicial cost for proceedings** connected with the accident of the serious illness.

On the basis of Government Decision No. 868/2008⁹², the above mentioned consular services that are available to the Romanian citizens will also be available to other citizens of the EU, when, in the territory of a third country where they are located, there is no permanent and accessible diplomatic mission or consular post or any relevant accessible Honorary Consul of their own Member State or another State representing the Standing.

4.4. Assistance in cases of arrest or detention

The Consular Regulation has only general provisions on consular assistance and protection given to detained or arrested Romanian citizens. Firstly, it provides that, in general, consular assistance and protection can be given in cases of arrest or detention of Romanian citizens abroad. Secondly, it lays down certain obligations of the consular officials⁹³: **the consular official shall ensure the representation of Romanian citizens before the Courts of the State of residence or shall take the necessary measures to ensure the adequate representation of Romanian citizens** by requesting the adoption of temporary measures for the protection of rights and interests of Romanian citizens who are not present or due to other reasons they have not benefited of adequate representation before the Court. The representation by the consular officials

⁹¹ See p. 14.

⁹² See Arts 1 and 3(b) of the Government Decision no 868/2008.

⁹³ See Art. 14(3) of the Consular Regulation.

or the temporary measures taken by them have to be in conformity with the law of the State of residence.

The MFA Guide on consular services⁹⁴ gives more details on what are the rights under international law of a Romanian citizen who is arrested or detained abroad. **Therefore, a Romanian citizen has the following rights that have to be respected by the local authorities of the third country where they are arrested or detained:**

- the right to ask the local authorities to notify the Romanian embassy or consulate of their arrest or detention;
- the right to consular assistance within certain limits;
- the right to contact his/her family; the consular officials can also contact the family of the detained or arrested Romanian citizen but only after having his/her consent;
- the right to legal aid or to a lawyer paid by the Romanian citizen or his/her family;
- the right to medical aid;
- the right to have the proceedings connected with the arrest or detention translated, and with a translator provided by the country of residence or, if possible, a translator recommended by the Romanian embassy or consulate;
- the right to postal correspondence, while also respecting the legislation of the country of residence;
- the right to receive visits from the consular personnel or from his/her family;
- the right to be transferred in Romania in order to serve the criminal sentence there (this right exists only if the criminal sentence has been taken in one of the countries that accept this procedure on the basis of international agreements and their own domestic legislation);
- the right to assistance given by international non-governmental organisations (the contact information of international non-governmental organisations active in this field can be made available to the Romanian citizens by the Romanian consulates).

The MFA Guide on consular services also sets out **the rights of consular officials with regard to arrested or detained Romanian citizens; they can:**

- contact the arrested or detained Romanian citizen, after receiving the notification of arrest or detention from the local authorities;
- visit the Romanian citizens at the place of detention;
- recommend lawyers or translators that the Romanian citizen can hire to represent them before the authorities of the country where they are detained/arrested;
- notify the local authorities of possible abuses or breaches of the rights of the Romanian citizens⁹⁵;
- notify the local authorities of diseases that the arrested/detained Romanian citizen suffers and require special medical care during the arrest/detention;
- transmit messages to the family of the arrested/detained Romanian citizen at the request of the latter.

⁹⁴ See MFA Guide on consular services, p. 19, 20.

⁹⁵ The rights of the Romanian citizens under international law, as highlighted in the foregoing paragraph.

The Consular Convention concluded with Russia provides in Art. 20 a very specific right of consular officials towards arrested citizens of the sending State. Accordingly, the consular post of the Sending State has the right to be informed by the competent authorities of the other Contracting Party of any arrest of their citizens within a maximum of three days from the moment when the arrest was made.

According to the Consular Regulation and consular practice, **the obligations of consular officials towards arrested or detained Romanian citizens abroad are the following:**

- the diplomatic mission or the consular post have to keep an evidence of all nationals arrested within their consular jurisdiction;
- the consul or vice-consul has the obligation to visit them⁹⁶;
- they have to provide at least one visit for the purpose of making sure that the Romanian citizens receive legal assistance, when it is the case, as well as to check on their medical status;
- they have to pay a visit to the Romanian citizens after every appearance of the arrested/detained Romanian citizen before the Court of the State of residence;
- after being sentenced to prison, the Romanian citizen will have to be visited periodically. All arrested nationals will be visited also on request.

Consular officials **are not competent to do the following:**

- to set free the Romanian citizen from the place of detention;
- to influence the adoption of decisions by the public authorities of the State of residence in judicial proceedings;
- to legally represent the arrested/detained Romanian citizens (only a competent lawyer can provide for such a service)⁹⁷;
- to confer a more favourable treatment to the Romanian citizens than the treatment applied to the citizens of the State that took the detention measure, who are in a similar situation;
- to pay the costs of the judicial proceedings or of medical expenses;
- to start legal investigations or inquiries on the territory of the State of residence;
- to facilitate the receiving of packages, except written correspondence from the family of the arrested or detained Romanian citizen or other persons, if the domestic legislation of the State where detention takes place does not allow it.

According to Art. 15(d) of Law No. 198/2008, the Ministry of Foreign Affairs can use part of the extra fees collected from consular services provided urgently, for other expenditures that arise while consular officials fulfil one of their duties under the Vienna Convention on consular relations or the Statute of the diplomatic and consular officials of Romania abroad. Therefore, it may be that this sum is used in order to help the Romanian citizens to pay for legal representation, medical expenditures or for authorised translations. However, this will happen only in exceptional circumstances.

⁹⁶ Art. 14(5) of the Consular Regulation.

⁹⁷ However, according to Art. 14(3) of the Consular Regulation, when a Romanian citizen is not represented or is not adequately represented before the Court of the State of residence, the Romanian consular officials have the obligation to ask for temporary measures that will ensure the interests and procedural rights of the Romanian citizen, as far as the domestic legislation of the State of residence allows it.

On the basis of the Government Decision No. 868/2008, the above mentioned consular services that are available to the Romanian citizens will also be available to other citizens of the EU, when in the territory of a third country where they are located, there is no permanent and accessible diplomatic mission or consular post or any relevant accessible Honorary Consul of their own Member State or another State representing the Standing.

4.5. Assistance to victims of violent crime

There is no specific provision on assistance to victims of violent crime, the legal basis to provide assistance in this particular case can be found in:

- several articles of the Consular Regulations, such as: Art. 14 which establishes that consular assistance and protection can be given in cases of death, repatriation, or victims of accident; Art. 17 which sets out the duties and powers of the consular officials in case of death of a Romanian citizen;
- the MFA Guide on consular services⁹⁸;
- Art 15 of Law No. 198/2008 which provides the situations where financial help can be given to the Romanian citizens from the fees collected by the Ministry of Foreign Affairs for consular services provided urgently;

See also sections [4.2](#) (assistance in cases of death) and [4.2.1](#) (identifying and repatriating remains).

4.6. Relief and repatriation of distressed citizens

There is no specific legislation governing the field of repatriation of Romanian or EU citizens in cases of distress. Whenever there have been such cases, the Ministry of Foreign Affairs has made public statements on what will be the measures they will be taken in order to evacuate the Romanian citizens and their families from distressed places and what will be the procedures, if any, that Romanian citizens have to follow for the evacuation/repatriation⁹⁹.

The Ministry of Foreign Affairs periodically transmits instructions to the Romanian diplomatic and consular missions located outside the EU in view of elaborating and updating plans for the management of crisis with consular impact. They also transmit directives on the evacuation of the Romanian citizens. There is also a close relation of coordination and exchange of information between the diplomatic and consular missions of all Member States, at the local level, for the purpose of elaborating plans for the management of crisis with consular impact.

According to the practice developed so far, the Romanian consular missions provide help and assistance in cases of natural disasters or severe disturbances of the public order, by adopting the measures deemed appropriate in face of the events, like the evacuation of the Romanian citizens whenever it is necessary.

⁹⁸ See p. 13-15 of the MFA Guide on consular services on what are the duties and powers of the consular officials in case of accidents in which Romanian citizens are involved.

⁹⁹ This has been the situation in the case of the multiple conflicts in the Gaza Strip (<http://www.mae.ro/index.php?unde=doc&id=33295>) (available only in Romanian language), Georgia (<http://www.mae.ro/index.php?unde=doc&id=36663>, <http://www.9am.ro/stiri-revista-presei/Politica/100312/MAE-incepe-evacuarea-romanilor-din-Georgia.html>), Lebanon (<http://www.mae.ro/index.php?unde=doc&id=11138&idlnk=&cat=4>, <http://www.mae.ro/index.php?unde=doc&id=11142&idlnk=2&cat=4>).

In case there is the need to **evacuate** Romanian citizens (either because of war, violent political crisis, natural disaster or severe disturbances to public order), consular missions have adopted prompt measures which they deemed to be appropriate to the situation, namely:

- contact the people and inform them of the behaviour to be adopted in such circumstances;
- inform them of the existence and location of refuges and gathering spots;
- assess the logistic needs demanded by the situation and obtain the means for its satisfaction;
- seek the support and cooperation of entities capable of lending help;
- provide and protect the exit out of danger zones;
- cooperate with other competent authorities in the evacuation procedures.

The expenses made with the evacuation procedures are paid by the State¹⁰⁰. According to Government Decision No. 780/1995, if the Romanian citizens located abroad are in difficult situations and do not have financial means, the Romanian diplomatic and consular missions, having the previous approval of the Ministry of Foreign Affairs, can **advance the necessary financial resources¹⁰¹**. **The Romanian citizen who has received financial help will have to guarantee in writing that he will reimburse the financial advancement once he has returned in Romania.**

In emergency cases, like natural disasters or civil and military unrest, the practice has been to provide assistance to the families of the Romanian/Union citizens as a whole, irrespective of the nationality of some of the family's members. That was, for instance, the case in Gaza Strip conflict of 2007¹⁰² and again later on in 2009¹⁰³. The most recent intervention¹⁰⁴ of the Romanian Ministry of Foreign Affairs has been in Egypt, where Romanian tourists present in an Egyptian resort could not leave the country due to the impossibility of the Egyptian low cost airline company to fly. The Ministry of Foreign Affairs successfully intervened at the travel agencies in order to bring the Romanian tourist as fast as possible back in Romania and to determine the travel agency to provide them food and accommodation for the additionally days the Romanian citizens had to spend there.

In regard to the natural disaster occurred in Haiti in January 2010, the Romanian Ministry of Foreign Affairs successfully managed to evacuate a Romanian citizen from Haiti, with the help of the Spanish Embassy present in Haiti¹⁰⁵. The Romanian citizen was first brought in the Dominican Republic then in Spain and from there to Romania¹⁰⁶.

¹⁰⁰ See for example the situation of evacuating the Romanian citizens from the Gaza Strip in 2007, when the Ministry of Foreign Affairs made available a private plane for the purpose of safely transferring the Romanian citizens back to Romania.

¹⁰¹ Consular taxes are added to the advanced financial resources in the amount provided by the law.

¹⁰² See for example the situation of evacuating the Romanian citizens from the Gaza Strip in 2007.

¹⁰³ More information available at <http://www.mae.ro/index.php?unde=doc&id=12990> and <http://www.mae.ro/index.php?unde=doc&id=13072>

¹⁰⁴ April 2010, see more at <http://www.mae.ro/index.php?unde=doc&id=43100> (available only in Romanian language).

¹⁰⁵ Spain was the only Member State having a diplomatic mission in Haiti.

¹⁰⁶ More information on the evacuation is available as a press release at <http://www.mae.ro/index.php?unde=doc&id=41942> (available only in Romanian language). In accordance with ex- Art. 20 TEC and the provisions of Decision no 96/409, the Foreign Affairs Ministry succeeded to bring the Romanian citizen back to Romania due to the close collaboration with other diplomatic missions, especially of Spain. The Ministry of Foreign Affairs has been in permanent contact

However, Romanian citizens cannot be forced to leave the country in distress, evacuation is done only with their consent.

On the basis of Government Decision No. 868/2008¹⁰⁷, the above mentioned consular services that are available to the Romanian citizens will also be available to other citizens of the EU, when, in the territory of a third country where they are located, there are no permanent and accessible diplomatic missions or consular posts or any relevant accessible Honorary Consul of their own Member State or another State representing the Standing.

4.6.1. Natural disasters

In extreme cases of natural disasters, the Romanian embassies located in third countries are competent do to the following:

- contact the respective State authorities to be informed about the situation;
- contact the Romanian citizens and inform them of the behaviour to adopt in such circumstances;
- help the Romanian/EU citizens to contact their families or relevant national authorities, if asked to do so;
- provide special help and take steps in case of *force majeure*;
- assess the logistic needs demanded by the situation and obtain the means for its satisfaction;
- cooperate with other competent services in the evacuation procedures.

4.6.2. Terrorist acts

In cases of terrorist acts, the Romanian embassies and consulates will take the following measures,:

- contact the respective State authorities to know about the situation;
- ensure that Romanian/EU citizens' rights are respected and make steps in this regard;
- help the Romanian/EU citizens to contact their families or the respective national authorities, if asked to do so;
- assist and support in cases of kidnappings, disappearances or death of close relatives.

4.6.3. Pandemics

The Romanian consular and diplomatic missions maintain contact with local authorities and provide information to the Romanian Ministry of Foreign Affairs on registered incidents.

with Mr. Emanuel Petruț (the Romanian citizen), by both phone and e-mail, with the aim to evacuate him from Haiti as soon as possible. Because the mobile telephony system would freeze frequently, the only efficient way to communicate with the Romanian national was the Internet, and Emanuel Petruț could receive all the necessary information in real time concerning the evacuation procedure.

¹⁰⁷ Arts 1, 3(e) of the Government Decision no 868/2008.

4.6.4. Military conflicts

In extreme cases of military conflicts, the Romanian embassies of consular posts are competent to do the following:

- contact the respective State authorities in order to find out what is the exact situation;
- ensure that the Romanian/EU citizens' rights are respected and make steps in this regard;
- help the Romanian/EU citizens to contact their family or the respective national authorities, if asked for;
- provide special help and take steps in cases of *force majeure*;
- assist and support in cases of kidnappings, disappearances or death of close relatives¹⁰⁸.

4.6.5. Financial advances

The area is regulated by the Government Decision No. 868/2008 which implements Decision 95/553/EC.

The Government Decision provides two general situations:

- firstly, when the citizen of an EU Member State asks for financial help from a Romanian diplomatic or consular mission located in a third country;
- secondly, when a Romanian citizen asks for financial help from a diplomatic or consular mission of an EU Member State while being in a third country.

In both cases, the general rule is that no financial advances are given without the previous consent of the Ministry of Foreign Affairs or the diplomatic or consular post of the State of origin of the EU citizen.

In exceptional circumstances of extreme urgency, the financial advances may be given without the previous approval of the above mentioned authorities. The situations where financial advances can be given to EU citizens located outside the EU by Romanian diplomatic or consular missions are those listed in Decision No. 95/553: a) in cases of death; b) in cases of accident or serious illness; c) in cases of arrest or detention; d) assistance to victims of violence; e) support and repatriation of EU citizens in need.

As regards financial advances that can be given to Romanian citizens while being abroad by Romanian diplomatic or consular missions, the Government Decision No. 780/1995¹⁰⁹ *on ways and conditions when Romanian diplomatic and consular missions can assist and provide services to Romanian citizens in special situations while being abroad* is the legal regime. According to the latter Government Decision, the situations where financial advances can be given are the following: a) serious illnesses that require hospitalisation or medical urgency; b) accidents, including traffic accidents; c) death; d) lost, theft of travel documents, transport tickets, money, passports, certificates; e) in other special cases, including legal assistance in criminal cases for Romanian citizens sentenced abroad. If Romanian citizens, while being in a third country, are in one of these situations and without financial means, the diplomatic and consular missions

¹⁰⁸ See the website of the Romanian Ministry of Foreign Affairs at the section on Advices for Travel. There are mentioned the conditions for traveling in each country of the world and several important telephone numbers, such as for the local police, hospital, urgency, border police and firemen. See <http://www.mae.ro/index.php?unde=doc&id=29605&idlnk=3&cat=29919>

¹⁰⁹ The Government Decision no 780/1995 published in the Official Journal no 233 of 10.10.1995, Part I.

having the previous approval of the Romanian Ministry of Foreign Affairs can advance the necessary sum in foreign currency, within the limit of the actual expenditures, to which the consular fees provided by law are added. **The advance will be given based on the authentic written commitment of the applicant that he/she will reimburse the advanced amount when he/she will return in Romania.** The commitment of reimbursement can be made also by a family member of the beneficiary or another person located in Romania. The financial advances are recouped in Romania, in the foreign currency of payment, within a maximum of 60 days from the date of signing the commitment to pay, from the following persons: a) the beneficiaries; *or* b) other persons located in Romania who committed on written to pay the financial advances; *or* c) certain sending units, in cases the person who committed is traveling for work purposes. In cases where the persons who committed to pay refuse subsequently to pay, the relevant procedure laid down in the civil procedure Code will be followed.

The Government Decision 780/1995 enumerates certain situations where financial advances cannot be given, such as: travel and medical expenses. However, Law No. 198/2008, which is of a higher legal force and adopted after the Government Decision No. 780/1995, will take precedence. On the basis of Art. 15(d) of Law No. 198/2008, financial advances can be given to Romanian citizens also in regard to other expenditures that arise when consular and diplomatic officials fulfill their duties provided in the Statute on consular and diplomatic officials¹¹⁰ and in the Vienna Convention on consular relations. Consequently, **in exceptional circumstances, financial advances can be given also for travel and medical expenses.**

4.7. Consular fees

The legal regime on consular fees is governed by Law No. 198/2008¹¹¹ *on charged consular services and the handling fees levied at the diplomatic missions and consular posts of Romania abroad*. The above mentioned Law stipulates that for consular services urgently provided by consular officials, an extra-tax is required. The amount of the supplementary tax is of 10 € or the equivalent of the amount in the currency of the State where the consular services are provided. Consular services that are considered to be provided urgently are those services provided immediately or within 48 hours.

On the basis of Art. 15 of Law No. 198/2008, the Ministry of Foreign Affairs can use all the amount of the collected extra fees in the following situations: a) to pay the transport of the Romanian citizens who are in difficult situations and without financial resources and of children without a legal tutor, including the payment of transport, accommodation and daily allowance expenditures for the persons accompanying them, when assisted repatriation is required; b) to pay the expenditure for repatriation of Romanian citizens, deceased on the territory of the State of residence, and when their families do not have the financial means to pay the repatriation and there is no possibility to bury the persons in the State where the decease occurred; c) to pay other expenditures that arise when consular and diplomatic officials fulfill their duties provided in the Statute on consular and diplomatic officials and in the Vienna Convention on consular relations¹¹². For the situations laid down at points a) and b), if

¹¹⁰ Law no 269/2003 laying down the Statute of diplomatic and consular officials of Romania published in the Official Journal no 441 of 23.06. 2003.

¹¹¹ Law no 198/2008 published in the Official Journal no 728 of 28.10.2008, Part I, as amended by Law no 78/2010.

¹¹² An example under this paragraph can be the following: to pay the visits made to Romanian citizens who are in penitentiary located outside the jurisdiction of the consular office (while respecting the limits provided by the Vienna Convention on consular relations).

the required sum is less than 500 €, then the amount of the supplementary fees can be used by the diplomatic or consular missions only with the previous consent of the director of that diplomatic or consular mission. For sums more than 500 € the previous consent of the Romanian Ministry of Foreign Affairs is needed.

According to Law No. 198/2008, the levied consular fees for visa handling, are the following:

Visa type	Consular fee
Airport transit visa	€60
Transit visa	€60
Short-stay visa	€60
Collective visa	€60 + €1 per person
Long-stay visa	€120

The visa handling fees are charged beforehand, in Euro and US Dollars, or, depending on the case, in the currency of the State of residence, taking into account the medium exchange rate of the convertible currency, towards the Euro. In the States with free currency market, visa fees may be mainly levied in Euro or US Dollars.

For the nationals of third States with which the ex European Community has concluded visa facility bilateral Conventions (The Russian Federation, Ukraine, Albania, Bosnia and Herzegovina, Montenegro, the Republic of Moldavia), the fees levied are the ones established through the respective agreements, namely 35 or 70 Euro. Until Romania's adhesion to the Schengen Area, visa handling is free for the Republic of Moldavia, Serbia and Macedonia¹¹³.

No visa fees are levied for the following categories of applicants:

- Children under 6 years of age;
- Pupils and students, postgraduate students and accompanied teachers who travel to Romania for studies or educational briefings;
- Researchers from third States who travel to the Community for research purposes, as defined in Recommendation 2005/761/CE;
- Foreign officials, members of international organizations to which Romania is party;
- Staff members of foreign diplomatic missions and consular posts, citizens who accompany State and government officials, parliamentary delegations and other official guests, as well as their family members. In these cases, the handling fee exemption is based on reciprocity.

The long-stay visa for aliens who are family members of Romanian citizens is granted by the diplomatic missions and consular posts of Romania abroad, who still have to pay the visa fee.

Consular fees for issuance of EDTs is provided in Law No. 198/2008 as amended in May 2010. Currently, the issuance of a temporary travel document by a Romanian diplomatic or consular mission costs 65 €.

¹¹³ Starting from 19 December 2009, citizens of Macedonia, Montenegro and Serbia do not need a visa for short staying in Romania, according to Regulation no 2001/539/EC.

With regard to the consular fees applied by Romania, in principle, according to the law, the consular fees collected in Romania or abroad are the same for the Romanian citizens as for citizens of the European Union and any other person.

4.8. Reimbursement of the assisting State

Government Decision No. 868/2008 provides that in the case of a Romanian citizen located in a third country that received financial advances from the diplomatic or consular mission of an EU Member State, **the reimbursement of these expenditures will be made by way of a bank transfer from the account of the Romanian Ministry of Foreign Affairs to the account of the Member State that provided the financial assistance.** The reimbursement will be made from the annual budget of Romania, after receiving the documents proving the commitment of the Romanian citizen to reimburse the financial advances that he/she received from another Member State. The Ministry of Foreign Affairs will recoup the financial advances from the Romanian citizen when the latter will return in Romania.

If the financial advances is made by a Romanian diplomatic or consular mission located in a third country to an EU citizen, the applicant will have to commit that he/she will reimburse the entire amount. The format of the document attesting the commitment of the EU citizen will be decided by the Ministry of Foreign Affairs.

4.9. Case studies, in particular problematic practices

No specific section is allocated to this issue on the site of the Romanian Ministry of Foreign Affairs, neither on the individual sites of the Romanian embassies or consulates in third countries. However, information on certain problematic practices and replies to frequently asked questions by the Romanian/EU citizens are available under different sections available on the site of the Romanian embassies and consulates in third countries, such as: visas, consular services, or news. Separate sections are allocated to problematic practices and frequently asked questions on the site on the Romanian embassies or consulates in States where the Romanian community is large, such as Spain or Italy.

5. Emergency travel document (ETD)

In ordinary cases Romanian diplomatic or consular officials will issue on request, temporary travel documents, such as travel documents and temporary passports and will exchange expired identity documents.

The rules laid down in Decision 96/409/CFSP are followed by the diplomatic and consular missions according to the information made available on the site of the Ministry of Foreign Affairs¹¹⁴. The site does not mention whether the Decision has been implemented by Romania and by which act. According to the official reply¹¹⁵ of the Consular Relations Department of the Romanian Ministry of Foreign Affairs, **the CFSP Decision was not implemented by way of a separate act, however, it is strictly followed by the Romanian diplomatic and consular missions. The rules provided**

¹¹⁴ See more at <http://www.mae.ro/index.php?unde=doc&id=37842> (available only in Romanian language).

¹¹⁵ Formal reply of the Consular Relations Department of the Romanian Ministry of Foreign Affairs no G5-1/11729 of 10.06.2010.

on the Ministry of Foreign Affairs site¹¹⁶ for obtaining a travel document in case the travel document was lost or stolen are the ones provided in the EU Decision. The Ministry of Foreign Affairs has also mentioned that in cases of evacuation of Romanian citizens from distress situations, the Romanian embassies and Consulates have provided travel documents in accordance with the aforementioned CFSP Decision¹¹⁷. According to the formal reply of the Consular Relations Department of the Romanian Ministry of Foreign Affairs¹¹⁸, **all Romanian diplomatic missions and consular posts issue ETDs to all EU citizens who fulfil all the subsequent conditions:**

- have lost, been stolen or destroyed the travel document or when their travel document is unavailable; and
- the EU citizen is located in the territory of a third country where there is no permanent and accessible diplomatic mission or consular post of his/her own Member State or another Member State representing the former; and
- if the State of origin of the requesting EU citizen has given its previous approval to the issuance of the ETD by the Romanian diplomatic mission or consular post.

In cases of lost or theft of travel documents, transport tickets, money, passports, certificates, a consular official can do the following: they can issue a **travel title** or a **simple temporary passport**. According to the information made public on the Ministry of Foreign Affairs site, the diplomatic and consular missions of Romania abroad will no longer receive requests for issuance of the Romanian passports in simple format; they are replaced by simple electronic passports. If Romanian citizens do not have time to wait for the issuance of a simple electronic passport, they can request the immediate issuance of a travel document. On the basis of this travel document the Romanian citizens can travel back in Romania where they can obtain the passport. The Romanian citizens can also obtain a temporary simple passport. The temporary travel document has a validity period of 30 days, while the simple temporary passport has a validity period of one year.

Honorary consuls are not competent to issue any of the aforementioned travel documents.

There are no publicly available reports on issuing ETDs.

6. Relevant diplomatic protection

According to Art. 17 of the Constitution, the Romanian citizens, while abroad, shall enjoy the protection of the Romanian State. This article can be interpreted as providing a **right to consular and diplomatic protection for the Romanian citizens**. In the same line, Art. 4(1) of Law No. 248/2005 clarifies the issue as it expressly provides that the Romanian citizens have *the right to diplomatic and consular protection and assistance* given by the Romanian diplomatic and consular missions. However, there is no legal provision stipulating expressly the corollary general obligation of the Romanian diplomatic and consular officials to confer consular assistance and protection to Romanian citizens. Art. 4(2) of Law No. 248/2005 provides only that the Romanian

¹¹⁶ Available only in Romanian at <http://www.mae.ro/index.php?unde=doc&id=29566&idlnk=4&cat=5> and <http://www.mae.ro/index.php?unde=doc&id=37846&idlnk=4&cat=5>

¹¹⁷ <http://www.mae.ro/index.php?unde=doc&id=41942> (available only in Romanian language).

¹¹⁸ Formal reply of the Consular Relations Department of the Romanian Ministry of Foreign Affairs no G5-1/11729 of 10.06.2010.

diplomatic missions and consular posts have the obligation to offer support and assistance, in accordance to the law, to Romanian citizens who are in difficulty or ask for help to return in Romania, which is a limited obligation of assistance and protection. They also have the obligation to inform the Romanian citizens of every possible situation that could hinder their security or health.

Diplomatic protection is provided only for Romanian and EU nationals¹¹⁹, not extended to family members who are not nationals of a Member State¹²⁰.

7. Exercise of consular functions for expats

The Romanian Ministry of Foreign Affairs supports the Romanian expats and exercises consular protection and assistance in the same conditions as for the Romanian citizens who are staying for short periods. The consular services that are usually provided are the following:

- Passports and travel documents;
- Notary and civil registrar acts;
- Certain functions of an administrative nature;
- Transmitting judicial and extra-judicial documents or executing rogatory requests or commissions to take evidence for the courts of the sending State;
- Polling station or other support for voting in elections; this is one of the most important consular services provided to the expats, as it seen as maintaining the liaison of the Romanian expats with their home country (however, note that the service is also opened to short-staying Romanians).

Statistical data for such services are not publicly available.

In countries where there are large communities of Romanians, consular officials give consular assistance or advices also on the Internet¹²¹.

8. Summary

Romania is a party to some of the most important international Treaties, such as the Vienna Conventions on consular and diplomatic relations and its Additional Protocols on dispute settlement.

Starting from 1968, Romania has concluded several bilateral treaties on consular relations or having provisions on consular relations. **These bilateral treaties on consular relations have not yet been amended in order to reflect the European legislation, namely to stipulate the extension of the Romanian consular and diplomatic protection to the other EU citizens**, when in the territory of a third country where they are located there are no permanent and accessible diplomatic missions or consular posts or any relevant accessible Honorary Consul of their own Member State or another State representing the Standing. However, there is national legislation implementing the EC Decision. Romania has also not extended its consular and diplomatic protection to family members of its citizens or EU citizens. However, **in cases of Romanian or EU citizens who are in distress situations, their family members, who are not EU citizens, will be helped by the Romanian consular and diplomatic missions by providing more easily accessible visas to enter the territory of Romania**. In the 2009 Gaza Strip difficult situation, the Palestinians that were family

¹¹⁹ See also Art. 46 of the EU Charter on Fundamental Rights.

¹²⁰ According to the interviews had with Romanian consular officials.

¹²¹ This is currently the case in Italy, Spain, and certain embassies in the US.

members of the Romanian citizens had the possibility to obtain with priority and in a faster procedure the visas to leave the territory and accompany their family in the evacuation process that was organised by Romanian diplomatic missions¹²².

Government Decision No. 868/2008 concerning the protection of EU citizens by diplomatic and consular missions implemented Decision 95/553/EC. The Government Decision practically reiterates the exact wording of the EC Decision. Therefore, the consular protection that Romanian citizens benefit of in the limited situations provided in the Government Decision is also extended to the other EU citizens. However, Romania has not undertaken the obligation to offer consular assistance and protection in other situations than those mentioned by the Government. Art. 46 of the EU Charter on Fundamental Rights may, however, confer such a right to the EU citizens. On the other hand, **Decision 96/409/CSFP on the establishment of an emergency travel document has not been implemented by a separate internal act**, however, so far, the consular practice seems to suggest that the Decision is closely followed by the Ministry of Foreign Affairs and the diplomatic and consular practice¹²³.

The Guide book on consular services published by the Ministry of Foreign Affairs provides general information for the public on what a consular official can or cannot do in situations such as: serious illnesses, accidents, arrest and detention, when travel documents have been lost or stolen or the Romanian citizens are travelling with children. It is a useful guiding leaflet on the rights of the Romanian citizens while being abroad and in difficult situations, which can also be of help to EU citizens in case they want to benefit of the Romanian consular and diplomatic protection. The Consular Regulation can also provide useful additional information, especially in regard to death cases, which are not included in the Guide on consular services.

9. List of important documents

International treaties and related national instruments

1.

Title: Convenție consulară între România și Federația Rusă

Entry into force: 04/07/2003

Publication reference: Monitorul Oficial, Partea I nr. 918 din 8 octombrie 2004

English title: Consular Convention between Romania and the Russian Federation

French title: Convention consulaire entre la Roumanie et la Fédération Russe

Short summary: This is the latest bilateral consular convention established by Romania. It stipulates clearly all the requirements, benefits, and obligations of the consular offices of the Contracting Parties

2.

Title: Decret nr. 481 din 20 decembrie 1971 pentru aderarea Republicii Socialiste România la Convenția de la Viena cu privire la relațiile consulare

Entry into force: 24/02/1972

Publication reference: Buletinul Oficial nr.10 din 28 ianuarie 1972

English title: Decree No. 481 of 20 December 1971. Accession of the Romanian Socialist Republic to the Vienna Convention on Consular relations

French title: Décret n. 481 du 20 Décembre, 1971. Adhésion de la République socialiste Roumaine à la Convention de Vienne sur les relations consulaires

Short summary: Accession of the Romanian Socialist Republic to the Vienna Convention on Consular relations

¹²² See more at <http://www.mae.ro/index.php?unde=doc&id=12990> and <http://www.mae.ro/index.php?unde=doc&id=13072>

¹²³ See sections 4.6 and 5.

3.

Title: Legea nr 190 din 19 iunie 2007 pentru ratificarea Protocolului optional la Conventiei asupra relatiilor consulare

Entry into force: 19.06.2007

Publication reference: Monitorul Oficial, Partea I nr. 425 din 26 iunie 2007

English Title: Law No. 190 of 19 June 2007 ratifying the Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes, Vienna, 24 April 1963

French Title: Loi n. 190 du 19 juin 2007. Adhésion de la Roumanie au Protocol optionnel de la Convention de Vienne sur les relations consulaires

Short summary: Accession of Romania to the Optional Protocol the Compulsory Settlement of Disputes, Vienna, 24 April 1963

4.

Title: Decret nr. 566 din 8 iulie 1968, pentru ratificarea Conventiei cu privire la relatiile diplomatice, încheiata la Viena la 18 aprilie 1961

Entry into force: 08/07/1968

Publication reference: Buletinul Oficial nr. 89, 8 iulie 1968

English title: Decree No. 566 of July 8, 1968, ratifying the Convention on Diplomatic Relations done at Vienna on 18 April 1961.

French title: Décret n. 566 du 8 Juillet, 1968, ratifiant la Convention sur les relations diplomatiques, signée à Vienne le 18 Avril 1961

Short summary: Romanian ratification Decree of the Vienna Convention on Diplomatic Relations

National legislation

5.

Title: Constitutia Romaniei

Entry into force: 29/10/2003

Publication reference: Monitorul Oficial nr. 767 din 31 octombrie 2003

English title: Constitution of Romania, published in the Official Journal No. 758 of 29.10.2003

French title: Constitution de la Roumanie

Short summary: On the basis of Art. 17 of the Romanian Constitution, Romanian citizens have a fundamental right to consular and diplomatic protection.

6.

Title: Codul de procedura civila

Entry into force: 26/07/1993

Publication reference: Monitorul Oficial nr. 177 din 26 iulie 1993 ultima modificare adusa la OUG nr. 42/2009

English title: Romanian civil procedural Code

French title: Code de procedure civil

Short summary: According to Art. 2(1) of the civil procedural Code, Romanian citizens can submit a complaint against the refusal of a consular official to provide consular services before the court of second instance located in Bucharest

7.

Title: Hotărâre nr. 868 din 20 august 2008 privind protecția cetățenilor Uniunii Europene prin misiunile diplomatice și oficiile consulare

Entry into force: 28/08/2008

Publication reference: Monitorul Oficial, Partea I nr. 627, 28 august 2008

English title: Decision No. 868 of 20 August 2008 on the protection of European Union citizens by diplomatic missions and consular posts

French title: Décision n. 868 du 20 août 2008 concernant la protection des citoyens de l'UE par les missions diplomatiques et consulaires

Short summary: This decision implements ex-Art 20 of the EC Treaty and Decision 95/553/EC, regulating Romanian consular protection and assistance to EU citizens and provides the conditions necessary to be fulfilled by the Romanian and EU citizens in order to receive financial advances from the Romanian and other EU Member States diplomatic and consular missions.

8.

Title: Lege nr. 302/ din 28 iunie 2004 privind cooperarea judiciară internațională în materie penală

Entry into force: 01/07/2004

Publication reference: Monitorul Oficial nr. 594, 1 iulie 2004, republicată în Monitorul Oficial nr. 758 din 10 noiembrie 2008

English title: Law No. 302/2004 on international judicial cooperation in criminal matters

French title: Loi n. 302/2004 relatif à la coopération judiciaire internationale en matière pénale

Short summary: The law mentions briefly the type of assistance that consular officials can provide in situations of international judicial cooperation in criminal matters.

9.

Title: Lege nr. 272/2004 privind protecția și promovarea drepturilor copilului

Entry into force: 23/06/2004

Publication reference: Monitorul Oficial, Partea I, nr. 557, 23 iunie 2004

English title: Law No. 272/2004 on the protection and promotion of children rights

French title: Loi n. 272/2004 sur la protection et la promotion des droits de l'enfant

Short summary: The law goes in great details about children's rights and the requirements of private and public institutions to protect them, including the attributions of consular officials towards children of the Romanian citizens when they are abroad.

10.

Title: Hotărâre nr. 1443/2004 privind metodologia de repatriere a copiilor români neînsoțiți și asigurarea măsurilor de protecție specială în favoarea acestora

Entry into force: 24/09/2004

Publication reference: Monitorul Oficial, nr. 873, 24 septembrie 2004

English title: Decision No. 1443/2004 concerning the methodology for the repatriation of unaccompanied Romanian children and providing special protection measures for them

French title: Décision n. 1443/2004 concernant la méthodologie pour le rapatriement des enfants roumains non accompagnés et les mesures spéciales de protection

Short summary: The decision goes into details on the type of assistance the consular officials can give to Romanian children and their families/legal guardians in the process of repatriation.

11.

Title: Lege Nr. 269 din 17 iunie 2003 privind Statutul Corpului diplomatic si consular al României

Entry into force: 23/06/2003

Publication reference: Monitorul Oficial nr. 441, din 23 iunie 2003

English title: Law No. 269 of June 17, 2003 laying down the Statue of the diplomatic and consular officials of Romania abroad

French title: Loi n. 269 du 17 Juin 2003 sur le statut des agents diplomatiques et consulaires de la Roumanie en étranger

Short summary: This text sets out the rights and duties of the Romanian diplomatic and consular officials.

12.

Title: Ordonanță de urgență nr. 194 din 12 decembrie 2002 privind regimul străinilor în România

Entry into force: 27/12/2002, latest modification dates 5/06/2008

Publication reference: Monitorul Oficial nr. 955 din 27 decembrie 2002, Republicată în Monitorul Oficial Nr. 421 din 5 iunie 2008

English title: Emergency Ordinance No. 194 of December 12, 2002 on the foreigners' status in Romania

French title: Ordonnance gouvernemental d'urgence n. 194 du 12 Décembre 2002 concernant le statut des étrangers en Roumanie

Short summary: The Emergency Government Decree provides the rights of foreigners, including long-term residence, and stateless persons in Romania and while being abroad

13.

Title: Legea nr. 156/2000 privind protecția cetățenilor români care lucrează în străinătate

Entry into force: 04/07/2000

Publication reference: Monitorul Oficial, nr. 364, 4 august 2000, republicată în Monitorul Oficial nr. 291, 5 mai 2009

English title: Law No. 156/2000 on the protection of Romanian citizens working abroad

French title: Loi n. 156/2000 sur la protection des citoyens roumains travaillant à l'étranger

14.

Title: Hotărâre nr.760 din 16 septembrie 1999 privind aprobarea Regulamentului consular

Entry into force: 27/09/1999

Publication reference: Monitorul Oficial nr. 468, 27 septembrie 1999

English title: Government Decision No. 760/1999 concerning the Consular Regulation

French title: Décision n. 760/1999 concernant l'approbation du règlement consulaire

Short summary: A detailed description of the rules, rights, and obligations of the Romanian consular offices and diplomatic missions.

15.

Title: Lege nr. 248/2005 din 20 iulie 2005 privind regimul liberei circulații a cetățenilor români în străinătate

Entry into force: 1/08/2005

Publication reference: Monitorul Oficial, Partea I nr. 682/29 iulie 2005, republicată în Monitorul Oficial nr. 316 din 7 aprilie 2006, modificata prin OUG 207/2008

English title: Law No. 248/2005 concerning the regime of free movement of the Romanian citizens abroad

French title: Loi n. 248/2005 concernant le libre mouvement des citoyens roumains à l'étranger

Short summary: Law provides in Art. 4 the right of the Romanian citizens to diplomatic and consular protection and assistance from the Romanian diplomatic and consular missions.

16.

Title: Hotărâre nr.780 din 2 octombrie 1995 privind modul și condițiile în care misiunile diplomatice și oficiile consulare pot să acorde asistență, precum și unele servicii în favoarea cetățenilor români aflați temporar în străinătate, în situații deosebite

Entry into force: 10/10/1995

Publication reference: Monitorul Oficial nr. 233, 10 octombrie 1995

English title: Government Decision No. 780/1995 on ways and conditions when Romanian diplomatic and consular missions can assist and provide services to Romanian citizens in special situations while being abroad

French title: Décision du Gouvernement n. 780/1995 sur la manière et les conditions dans lesquelles les missions diplomatiques et consulaires peuvent fournir assistance et services pour les citoyens roumains à l'étranger qui se trouvent en circonstances spéciales

Short summary: The Government Decision No. 780/1995 provides the conditions that the Romanian citizens located abroad that are in difficult situations and do not have financial means have to fulfill in order to benefit of financial advances from the Romanian diplomatic or consular missions, the relevant procedures.

17.

Title: Legea nr.554 din 2 decembrie 2004 contenciosului administrativ

Entry into force: 8/01/2005

Publication reference: Monitorul Oficial nr. 1154 din 7 decembrie 2004 ultimata modificare a fost adusă de Legea nr. 100/2008

English Title: Law No. 554/2004 on administrative disputes

French title: Loi n. 554/2004 sur le contentieux administratif

Short summary: On the basis of Art. 2(2) of Law No. 554/2004 on administrative disputes the refusal of a consular official to provide consular assistance or protection is considered an unilateral administrative act which can be contested before the courts competent to review administrative claims.

18.

Title: Legea nr.198 din 21 octombrie 2008 privind serviciile consulare pentru care se percep taxe și nivelul taxelor consulare la misiunile diplomatice și oficiile consulare ale României în străinătate

Entry into force: 28 noiembrie 2008

Publication reference: Monitorul Oficial nr. 728/28 octombrie 2008 ultima modificare a fost adusă de Legea nr.78/2010

English title: Law No. 198/2008 on charged consular services and the handling fees levied at the diplomatic missions and consular posts of Romania abroad

French title: Loi n. 198/2008 sur les frais consulaires aperçu par les missions diplomatiques et consulaires

Short summary: The Law sets out the consular fees to be levied by the diplomatic and consular missions for the services that provide.

Reports

19.

Title: Ministerul Afacerilor Externe - Raport privind politica externa a Romaniei 2005-2008

Date: 2009

Publication reference: http://www.mae.ro/poze_editare/2008.11.25_RpMAE_2005-2008.pdf

English title: Ministry of Foreign Affairs - Report on Romania's foreign policy between 2005-2008

French title: Ministère des Affaires Etrangères - Rapport sur la politique étrangère de la Roumanie 2005-2008

Summary: Report on Romania foreign policy 2005-2008

Other documents

20.

Title: Ghidul serviciilor consulare

Date: 25/03/2009

Publication reference: http://www.mae.ro/poze_editare/2009.03.25_ghid_consular.pdf

English title: Consular service guide

French title: Guide des services consulaires

Short summary: Summary of what the Romanian diplomatic and consular officials can or cannot do for the Romanian citizens while abroad and in difficult situations.



Slovakia - Slovensko (SK)

1. Introduction

This Report contains the legal framework and national practice of Slovakia on consular and diplomatic protection as of 1 May 2010.

Slovakia can be considered as a Member State where only basic information can be found on the legal framework and practice on consular and diplomatic protection.

The basis of the report is: handbooks on international law and consular practice in Slovakia, the official legal information system *JASPI* available at the website of the Slovak Ministry of Justice¹, the website of the Slovak Ministry of Foreign Affairs² and interviews with officials from this latter Ministry and related internal documents.

1.1. Terminology - National acronyms and definitions

Systematic Directive on Consular Protection of EU Citizens (*Metodický pokyn o konzulárnej ochrane občanov EÚ*), Consular Guideline (*Konzulárna smernica*) and other internal guidelines and directives, Ministry of Foreign Affairs of the Slovak Republic.

Citizens Assistance and Services Centre (*Stredisko pre pomoc a služby občanom*), Ministry of Foreign Affairs of the Slovak Republic: (Citizens' Centre): unit of the Ministry of Foreign Affairs for citizens' support, permanent availability per e-mail, phone or fax.

Z. z. as Zbierka zákonov or *Zb. as Zbierka* (Coll. for Collection of Laws or Coll. for Collection).

MZV SR Ministerstvo zahraničných vecí Slovenskej republiky (Ministry of Foreign Affairs of the Slovak Republic).

Kompetenčný zákon: Zákon č. 575/2001 Z.z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy (Competence Law: Law on Organisation of Government Functions and of Central State Administration).

ZoPI: Zákon č. 211/2000 Zb. o slobodnom prístupe k informáciám a o zmene a doplnení niektorých zákonov (zákon o slobode informácií v znení neskorších predpisov) (Law on the Access to Information).

Zákon č. 151/2010 o zahraničnej štátnej službe (Foreign Service Act).

Úradný vestník EÚ: Official Gazette of EU.

2. Legal framework

Slovakia's legal framework consists of multilateral treaties, bilateral treaties, obligations under EC treaty, national legal acts, informal arrangements and State policy and practice.

So far, no enforceable basic right to consular or diplomatic protection has been established.

¹ www.justice.sk

² <http://www.mzv.sk>

2.1. International law

Slovakia is a Party to the following **multilateral conventions**:

- Vienna Convention on Consular Relations, in force for Slovakia since 12 April 1968 (Law No. 32/1969 Zb.), no reservation
 - Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes, in force for Slovakia since 27 May 1999 (Law No. 334/2000 Z. z.), no reservation
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80): in force for Slovakia since 20 February 1996

Slovakia is not a Party to other multilateral international treaties on consular protection.

Bilateral treaties

Slovakia (before 1993 as a part of Czechoslovakia) has concluded several agreements and treaties on consular relations (see the list in [Section 8](#)), some of them contain also provisions on consular assistance and protection, namely: Afghanistan, Albania, Algeria, Belgium, Bulgaria, China, Cuba, Cyprus, Ethiopia, France, Greece, Hungary, India, Iraq, Italia, Laos, Mongolia, North Korea, Poland, Romania, Russia, Syria, Tunis, Turkey, UK, USA, Yemen, Bosnia and Herzegovina, Croatia, Macedonia, Serbia, Montenegro, Ukraine.³ These treaties were concluded in 70-ties and 80-ties and have a very detailed regulatory framework similar to the Vienna Consular Convention. According to the treaties, informal agreements and mutual practice may extend the field where the assistance is provided, however, after 1989 there has been no further development in this area. It is probably a consequence of a regime change in 1989.

Most treaties concluded before 1993 are legally binding on Slovakia, since it considers itself as a successor to them. Slovakia has expressed its commitment in several notifications of succession to multilateral treaties and notifications of acknowledgment about the status of treaties between Slovakia and a relevant country. E.g., notification No. 53/1994 Z.z. in relation to the treaties where the UN Secretary General is a depository (i.e., the Vienna Convention on Consular Relations as well), or notification No. 324/1999 Z.z. in relation to the United Kingdom. All of the bilateral treaties on consular assistance mentioned *supra* have been acknowledged by similar notifications. Despite the fact that the mutual assistance has not been developed, *status quo* has been confirmed (one of the latest notifications was published in 2006, namely in relation to Albania). Although Slovakia has not intensified cooperation towards all states it has concluded treaties with before 1989 (some of them are different since they are EU Member States as well), diplomatic relations continue to be considered politically very important. Some exceptions concern particular cooperation on visa issuance, such as e.g., notification No. 544/2009 on Agreement between Slovak Republic Government and Austrian Republic Federal Government about mutual representation through their diplomatic missions and consular offices in visa issuance proceedings. Austria shall, under the agreement, provide issuance of visas on behalf of Slovakia through its embassies in Beirut (Lebanon) and Amman (Jordan). The agreement is not being implemented as the implementation protocol thereto has not been approved yet.

This was the first agreement negotiated with EU Member States on mutual representation through diplomatic and consular missions in the field of issuing visas within the meaning of common consular instructions. There were talks also with e.g., France (issuing visas in Algeria, Bangladesh, Morocco, Nepal, Russia (Yekaterinburg),

³ Source: website of the Ministry of Foreign Affairs of the Slovak Republic, www.mzv.sk and of the Ministry of Justice of the Slovak Republic www.justice.sk

Sri Lanka and Tunisia), Hungary (Moldova, Saudi Arabia and Albania), Germany (Armenia, Azerbaijan, Bahrain, Georgia, Cambodia, Russia), Poland (Angola, Georgia, Pakistan, Russia, Ukraine. The Slovak-Czech consular consultation held in December 2009 brought the Czech proposal to represent Slovakia in granting visas in Yemen, Moldova and Mongolia that is at present being considered by the Slovak side.

The Czech Republic presents a specific situation. Having been one State for almost 70 years and speaking very similar languages, mutual assistance prospers on a different level. Despite the dissolution, economic, social, cultural and administrative cooperation reflects that particular state of affairs. Even some certificates are recognized automatically (nor translation neither authorization is required), e. g. a person legally educated in the Czech Republic may practice in Slovakia. Moreover, since the legal orders have been formed together, judicial and administrative decisions are acknowledged easier. As for the consular assistance, formalization of the practice has been established by an inter-ministerial agreement, namely the **Agreement between the Ministry of Foreign Affairs of the Czech Republic and the Ministry of Foreign Affairs of the Slovak Republic on cooperation in the area of consular service** (*Dohoda medzi MZV SR a MZV ČR o spolupráci v oblasti konzulárnych služieb*). The system of cooperation was agreed upon on 4 February 1993, only over a month after dissolution of Czechoslovakia. It is based on reciprocity and good services provided to the citizens of the other State in case of accidents, distress and need in the third State where only a representation of one of the States is present. As for the consular documents from the former Federal Ministry of Foreign Affairs, they are provided mutually upon request. Apart from the assistance to their own citizens, both States have agreed to provide common praxis towards the citizens of the other State. Moreover, an exchange of diplomatic notes was realized in 2003 in order to enable application of more detailed conditions concerning transfer of the citizens from the third states in case it is necessary (*Výkonávací protokol k dohode medzi MZV SR a MZV ČR*). However, despite being norms that provide particular scope of rights for natural persons, these documents are not a part of Slovak Collections of Laws. The explanation provided by the Citizens Assistance and Services Centre points out that they are agreements concluded between Ministries of Foreign Affairs in the form of diplomatic notes.

2.2. Transposition of international law into national law

According to the Slovak constitution, the Slovak Republic acknowledges and adheres to general rules of international law, international treaties by which it is bound, and its other international obligations.⁴ However, in Slovakia, not all international treaties are directly applicable. Initially, according to Art. 11 of the Slovak Constitution, only those international treaties on human rights and fundamental freedoms which were ratified by the Slovak Republic and were promulgated in a manner provided by the law, were superior to its laws under the condition that they provided a larger scope of these rights and freedoms. However, because of the unclear status of several treaties and because of the aspiration of the Slovak Republic for the membership of the European Union, Slovakia has amended its Constitution to enable direct applicability of particular international or supranational legal norms. Actual Slovak Constitution sets forth in its Art. 7(4) that the validity of international treaties on human rights and fundamental freedoms, and international treaties which directly confer rights or impose duties on natural persons or legal persons, require the approval of the

⁴ Art. 1 (2) of the Slovak Constitution [online] available at http://www.concourt.sk/en/A_ustava/ustava_a.pdf.

National Council of the Slovak Republic before ratification. It therefore requires meeting more formal conditions before the superiority of these treaties to the Slovak law is established. Apart from legally binding acts of the European Communities and of the European Union, according to Art. 7(5), only international treaties on human rights and fundamental freedoms and international treaties for whose exercise a law is not necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified and promulgated in the way laid down by a law shall have precedence over laws.

2.3. Implementation of European law into national law

According to Art. 7 para 2 legally binding acts of the European Communities and of the European Union shall have precedence over laws of the Slovak Republic. The transposition of legally binding acts which require implementation shall be realized through a law or a regulation of the Government according to Art. 120, para. 2, i.e., if it is laid down by law and if it concerns execution of relevant acts of European Communities and of the European Union.

Art. 23 TFEU, Decision 95/553/EC and Decision 96/409/CSFP are directly applicable. For practical details, circulars to Slovak representations have been enacted. For reasons of clarity, Decision 95/553/EC was also published in the Official Gazette.

2.4. National law

After 17 years of preparation, Law No. 151/2010 Z.z. on Foreign Service was adopted on 9 March 2010. Foreign Service Act aims to cover employment relations in relation to the foreign service execution and establishes the principles of such service; it also aims to cover position, establishment and closure and termination of representative bodies and their functions; diplomatic ranges, rights and obligations of employees in foreign service, some specific issues concerning State service execution in an office run by the Ministry of Foreign Affairs of the Slovak Republic. Most of the articles concern the status of the employees. Moreover, despite the fact that the law has been adopted in March 2010, it aims to deal with Slovak citizens only. **On the other hand, internal guidelines point out the direct application of Art. 23 TFEU.**

For consuls and diplomats, there are several general legal acts that are used in practice, e.g., Law on State Nationality, Law on Foreigners' Stay, Law on Travel Documents, Law on Family, Law on Registry, Law on Rap Sheet, Law on Notary, Law on International Private and Procedural Law, Law on Slovaks Living Abroad...

Moreover, there are several internal guidelines and directives that have been enacted by the Ministry of Foreign Affairs of the Slovak Republic. These internal guidelines and directives are not publicly available. However, the concise summary is as follows:

There are more than 15 areas which are covered by these internal guidelines. Some are general; however, most of them are on specific issues. Apart from general directives for organizational functions of Slovak consular offices, and charges for consular assistance, the guidelines focus on the area of help for Slovaks in time of need or distress. General directives include a provision about the direct application of Decision 95/553/EC. Moreover, **they expressly point out a right of a Slovak citizen to receive consular assistance.** Nevertheless, they do not provide any clause in case citizens are refused to be provided consular protection.

The visa issuing, travel documents, notary and registry function of consular offices, assistance during criminal prosecution, documents on arms transport, State citizenship,

and protection of minors' rights are generally covered in the internal directive and specified in the particular guidelines. Moreover, the field of patrimony rights and the transport of the dead are covered in a separated directive, as well as the conclusion of marriage. Last three special areas that are covered by these internal norms are as follows: non-professional consuls, legal aid and a special position of foreign Slovaks.

Moreover, the *Citizens' Help and Assistance Center* has been established to communicate with citizens. Although it has not been expressly clarified in its Statute, the help shall be provided for *EU* citizens, not only *Slovak* citizens. The Center has published general information concerning the consular assistance. Institutionally, it is a part of the Ministry of Foreign Affairs and its services are directly achievable through the website of the Ministry of Foreign Affairs. Moreover, in order to improve consular assistance, a new system of registration has been introduced by the Ministry of Foreign Affairs, namely registration of Slovak citizen abroad to enable more efficient work of consular offices.

2.5. Documentation of consular protection

Further, more-detailed documents are available at the website of the Ministry of Foreign Affairs of the Slovak Republic⁵.

Relevant Slovak Practice has been complied in Annual Reports of the Ministry of Foreign Affairs.

2.6. Information to citizens on consular protection

There is a brochure available on the website of the Ministry of Foreign Affairs for Slovaks abroad in case they needed help. It also contains information about the assistance provided by consular or diplomatic missions of other EU Member States in case there is no Slovak consular or diplomatic mission in the country where a person happens to be. Moreover, the non-stop line has been provided by the Ministry of Foreign Affairs. When going abroad, one is advised to fill in a form to register into the system in order to provide basic information and contact details of the next-of-kin.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Slovak bilateral agreements with third countries do not include provisions protecting Union citizens working and living in third countries.

Slovakia has not informed third countries of the practice of extending protection to Union citizens (Art 8 Vienna Convention on Consular Protection).

Slovak bilateral agreements with third countries do not include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

In general, Slovakia does not extend consular protection to Union citizens' family members who are not nationals of a Member State. Exceptions exist in case of evacuations. Until now, Slovakia has not informed third countries of this practice.

Slovakia has not started negotiations concerning agreements with third countries including provisions protecting Union citizens working and living in third countries.

⁵ www.mzv.sk.

Slovakia has not started negotiations concerning agreements with third countries include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

3.2. Statistical data on consular practice

Slovakia offers extensive consular services to its citizens. Further, Slovakia has provided assistance to Union citizens (Germans in Georgia). **Several diplomatic missions of other EU Member States have provided assistance to Slovak citizens** (eg. Lebanon crisis, tsunami). Statistics have been prepared irrespectively from State nationality of persons who have obtained help. However, such statistical information has been distinguished from this year on. Moreover, particular years have expanding number of different columns, within the statistics.

Statistical data:⁶

2009:

- authentication of 35.365 documents and 2.315 translations;
- issuance of 5.099 passports, 1.485 certificates on citizenship and 1.768 Abstracts from Criminal Records;
- assistance in the repatriation of 72 dead citizens of the Slovak Republic;
- assistance in solving problems connected with the death of 390 Slovak citizens;
- non-financial consular assistance to 2.870 applicants, while financial assistance was provided to 9 persons;
- issuance of 3.257 temporary travel documents;
- performance of the marriage ceremony for 56 couples;
- issuance of 65.438 visas;
- 2.217 applications for temporary residence permits in Slovakia and 101 applications for permanent residence permits in Slovakia;
- reply to 35.981 e-mail requests.

2008:

- 424 deaths;
- 528 serious injuries;
- 2.095 Slovak citizens who committed crimes;
- 182 assistance in the protection of the rights of minors;
- 34.372 legalisations of signatures, copies and translations;
- 3.352 requests for the issuing of birth, marriage and death certificates;
- 4.873 citizens applied for the issuing of a new passport;
- 82.565 visas for visits to the Slovak Republic

2007:

- 413 deaths;
- 469 serious injuries;
- 2.140 criminal activities Slovak citizens;
- incarceration of 309 Slovak citizens;
- restriction of individual freedom of 493 Slovak citizens;
- legalisation of 32.947 signatures, copies and translations;
- 6.601 requests for the issuing of birth, marriage and death certificates;
- 6.753 citizens applied for the issuing of a new passport;
- 96.775 visas for visits to the SR.

⁶ Information received upon a request based on the Law on the Access to Information and from the website of the Ministry of Foreign Affairs www.mzv.sk

2006:

- 341 deaths;
- 341 serious injuries;
- 1.943 criminal activities Slovak citizens;
- legal help: 71
- financial help: 7
- legalisation of 31.816 signatures, copies and translations;
- 7.184 citizens applied for the issuing of a new passport;
- 147.888 visas for visits to the SR.

Slovakia has experienced problems in providing assistance to Union citizens, in particular concerning questions of visa and travel documents.

4. Consular protection in detail

In Slovakia, the legal basis for consular services is constituted by the Vienna Convention on Consular Relations, directly applicable European rules, Foreign Service Act and several fragmented legal acts that cover specific areas that shall be executed by consular offices as well since they are State bodies.

Slovak practice is compiled in the internal guidelines and directives as well.

However, relevant case law on the rules for consular protection does not exist.

As for the European Union cooperation, Slovakia has taken part in the information exchange between embassies situated in the crisis areas and actively worked on the electronic systems of the COCON working group.

4.1. Right to consular (and diplomatic) protection

In Slovakia, no right to consular (and diplomatic) protection is expressly provided in a legal act. However, according to Art. 14 of the Competence Law, the Ministry shall insure protection of rights and interests of the Slovak Republic and its citizens abroad. Consequently, consular functions are perceived as an obligatory commitment towards the citizens and are approached so in the internal guidelines as well. Based on the above-mentioned decisions from the EU-level, consular assistance is extended to cover EU-nationals. **In general, consular protection is not extended to family members who are not nationals of a Member State.** It is also not extended to other categories (e.g., recognized refugees, stateless persons or persons with resident permits).

The issue of enforceability has, however, not been elaborated yet. The question concerns also the fact that consular assistance is provided in many areas and execution of some of them is specified in internal guidelines. Nevertheless, in case there is a case in court, the wording of law might be interpreted in citizen's favor: the Consular Guideline expressly specifies that a citizen has a right to consular protection and that consular offices provide consular protection within the range that results from their obligations listed in generally binding legal acts which can be reasonably required under given circumstances. Consular offices shall adopt such measures that are within their possibilities and which are appropriate in a given case and common to ensure consular protection in international relations.

Slovak Ministry of Foreign Affairs has devoted a special part of its website to the **honorary consular offices** to assist them in their mission. Nevertheless, as the annual report 2009 observes, activities by individual honorary consuls include mostly a wide range of activities from coorganisation of visits of supreme representatives through the

important strengthening of the capacity for action of permanent representations from presentation of events of larger extent and coverage to participation by Slovakia in significant scientific projects of supra-regional importance.”⁷ Consular assistance is provided mostly by consular offices, sometimes consular departments of diplomatic missions, although according to the internal guideline honorary consuls are intitled to provide protection of interests of Slovak natural persons. As of January 2010 there were in total 147 consular offices of Slovakia led by Honorary Consuls operating in 83 countries. In comparison, there were 64 Slovak diplomatic missions and 9 general consular offices. Nevertheless, in relation to the implementation of the consular Lead State concept, Slovakia does not keep such a position in any of these countries.

4.2. Assistance in cases of death

Slovak diplomatic or consular missions **inform** the national authorities which contact the next-of-kin.

Slovak diplomatic or consular missions – with the consent of the next-of-kin – **assist in obtaining a death certificate and in arranging for the body** to be buried, cremated or repatriated to the home country.

Next-of-kin shall put a **deposit** for covering the costs of the funeral etc.

In 2008, 16 Slovaks died and several were seriously injured during a bus accident in Croatia. A charter flight was provided.

The families of three Slovak citizens who died during the early June crash of the Airbus A 330 over the Atlantic Ocean were provided with efficient assistance by the embassies concerned (Paris, Brasilia) and the Slovak Foreign Ministry. The same was the case during the evacuation of a Slovak citizen from Gaza back home through Damascus.

4.3. Assistance in cases of serious accident or serious illness

Slovak diplomatic or consular missions **inform** the next-of-kin, **arrange visits or give advice on reputable clinics and doctors**.

A **medical evacuation** is subject to the consent of the national authority and sufficient financial resources.

Some of the Slovak diplomatic missions assisted in repatriating Slovak tourists who were, while staying in holiday destinations, hit by the bankruptcy of the SkyEurope airline. Diplomatic missions and consular authorities helped to arrange their return to Slovakia and also helped them solve many problems that occurred in connection with the airline's downfall. Slovak Embassy in Rome for example on its own initiative arranged substitute bus transport for Slovaks who were waiting at Fiumicino airport.

In August 2009 the Slovak Embassy in Bucharest provided assistance to people when the bus they were travelling in crashed. 12 out of the 41 Slovak citizens involved were hurt.

In September 2009 the Embassy of Slovakia in Ankara in cooperation with the consular department, helped nine Slovak citizens who got hurt in a bus crash when travelling to that holiday centre.

The consular unit of the Embassy of the Slovak Republic in Vienna and the consular department of the Slovak Foreign Ministry were from the very outset providing efficient assistance to students who were, following a bus crash in June 2009, admitted to hospital in Graz, Austria. There were 48 students of a Senica business high school returning on the bus from their trip to Italy.

⁷ Annual Report of the Ministry of Foreign Affairs 2009, p. 49, online available on www.mzv.sk [last visit 13 March 2010].

4.4. Assistance in cases of arrest or detention

Upon notification by the authorities of the receiving State, the Slovak diplomatic or consular missions shall **inform** – with the consent of the citizen – the national authorities. **If possible the detainee shall be visited.**

The Slovak diplomatic or consular missions will observe the respect of international law (treatment of foreigners) and domestic law.

Support in finding appropriate legal advice shall be provided.

4.5. Assistance to victims of violent crime

Slovak diplomatic or consular missions **inform about medical assistance and legal advice.** Financial support is granted only in exceptional cases.

4.6. Relief and repatriation of distressed citizens

Slovak diplomatic or consular missions provide advice and assistance.

Slovakia is not a “Lead State” in any country.

Evacuations are organized in case of urgent necessity. **In case of urgent evacuation, Slovak diplomatic and consular missions may function without an approval of other ministries or missions.**

4.6.1. Natural disasters

Slovak consular and diplomatic authorities immediately establish **close contacts with citizens** in order to provide support and, if required, organize **evacuations** as soon as possible (e.g., Tsunami December 2004).

4.6.2. Terrorist acts

In the case of a terrorist attack, Slovak consular and diplomatic authorities **contact local authorities** in order to provide support to citizens if involved. Support to next-in-skin of possible victims is also given. There were no Slovak victims in London 2005 or in Sharm el-Sheik 2005. However, according to general practice, recovery would only be asked in case of gross negligence.

4.6.3. Pandemics

Slovak consular and diplomatic authorities **contact local authorities** in order to provide support to citizens if involved.

4.6.4. Military conflicts

Slovak consular and diplomatic authorities contact local authorities in order to provide support to citizens if involved. Information is provided to central State bodies and closest missions of evacuations which are organized immediately if necessary.

Lebanon conflict - July/August 2006:

Due to efficient sharing of transport resources (land transport, ship and military aircraft) between EU Member States, Slovaks were transported by Austria, Poland, Czech Republic, Hungary. Reimbursement of costs was not asked from Slovak citizens or Slovakia itself.

Georgia conflict - August 2008:

A charter flight for Slovak citizens was provided. One German citizen was transported by it as well.

Reimbursement of costs was not asked from Slovak citizens or citizens of other EU Member States.

Kenya conflict – December 2008-January 2009

Despite an offer, Slovak citizens refused to be transported. No other help was provided.

Haiti earthquake – January 2010

No Slovaks were affected; Slovak Ministry of Foreign Affairs has devoted financial and material help. Public and private institutions followed the action. The public has been called upon to make use of the registration form on the website of the Slovak Ministry of Foreign Affairs in the case of stays abroad.

4.6.5. Financial advances

Financial advances and repatriation to the home country will be provided only at utmost urgency.

Financial advances to EU citizens: So far, a standard practice has not been established. In general, consent of the other Member State is required for financial advances; e.g., a deposit or firm commitment for recovery of costs is obligatory.

In principle, payment is given only on a pro-rate basis.

4.7. Consular fees

As for the fees for the acts and proceedings provided for consular assistance, they are specified in the internal guideline and the scale of fees is made public on the website of the Ministry of Foreign Affairs. The fees are fixed or calculated percentually. However, if justified, they can be increased or decreased (e.g., from humanitarian reason or on the ground of reciprocity). The fees are payable in the local currency and due to the submission of the application of the particular consular act/proceeding.

5. Emergency travel document (ETD)

All Slovak diplomatic missions and general consulates are equipped with ETDs.

Honorary consuls are not competent to issue travel documents.

Practice is working sufficiently well; however, some practice of having business by selling travel documents has been reported from UK. That is why some missions are careful at providing ETDs.

6. Relevant diplomatic protection

As for Slovakia, Ministry of Foreign Affairs provides protection of rights and interests of its citizens abroad. Based on EU legislative framework, such practice has been extended to all EU-nationals. However, consular (and diplomatic) protection is not extended to family members who are not nationals of a Member State.

Slovak legal framework distinguishes a special category of foreign Slovaks. They are individuals whose State nationality is not Slovak, however, because of Slovak ethnic nationality or origin and Slovak awareness, they might be granted a status of a foreign Slovak. This status is granted by the Ministry of Foreign Affairs and provides special treatment in comparison to other foreigners in case of their stay in Slovakia. Nevertheless, these advantages are of special importance for non EU Member States

nationals. As for their status abroad, it focuses only on cultural, social and information support from the Slovak Republic. Consular assistance is specifically related to the State nationality, either Slovak or EU Member State.

7. Summary

Slovakia is a party to the most important international treaties on consular relations and has concluded several bilateral treaties and also maintains informal arrangements. Further co-operation is based on common cultural background but also diplomatic and consular networks.

Assistance to EU citizens is provided according to Article 23 TFEU. So far, some but not extensive practice exists. For evacuation actions in international conflicts, the *ad hoc* co-operation between EU Member States has proven to be very helpful.

The legal framework has not been extended by bilateral arrangements or detailed national legislation to cover the delegation of consular or diplomatic protection according to Article 23 FTEU or support for family members who are not nationals of a Member State.

8. List of important documents

International treaties and related national instruments

1.

Title: Viedenský dohovor o konzulárnych stykoch

Publication reference: No. 32/1969 Coll.

Entry into force: 12.04.1968

English title: Vienna Convention on Consular Relations, Vienna, 24 April 1963

2.

Title: Opčný protokol k Viedenskému dohovoru o konzulárnych stykoch týkajúci sa záväzného riešenia sporov

Publication reference: No. 334/2000 Coll.

Entry into force: 27.05.1999

English title: Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes, Vienna, 24 April 1963

3.

Title: Konzulárny dohovor medzi Československou republikou a Albánskou ľudovou republikou

Publication reference: No. 96/1960 Zb.

Entry into force: 03.06.1960

English title: Consular Convention between Czechoslovak Republic and People's Republic of Albania

Summary: Norms regulating co-operation between the States, establishment of Albanian and Slovak consular representations, their privileges and functions

4.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Francúzskou republikou

Publication reference: No. 79/1971 Zb.

Entry into force: 06.02.1971

English title: Consular Conventions between Czechoslovak Socialist Republic and French Republic

Summary: Norms regulating establishment of French and Slovak representations, their privileges and functions. Very detailed regulatory framework similar to Vienna Consular Convention

5.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Poľskou ľudovou republikou

Publication reference: No. 83/1973 Zb.

Entry into force: 19.04.1973. replaced the Convention from 17.05.1960

English title: Consular Convention between Czechoslovak Republic and People's Republic of Poland

Summary: Norms regulating establishment of Polish and Slovak representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

6.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Zväzom sovietskych socialistických republík

Publication reference: No. 143/1973 Zb.

Entry into force: 07.09.1973 Russia, Ukraine, Moldavia

English title: Consular Convention between Czechoslovak Socialist Republic and Union of Soviet Socialist Republics

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

7.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Bulharskou ľudovou republikou

Publication reference: No. 63/1974 Zb.

Entry into force: 23.03.1974

English title: Consular Convention between Czechoslovak Socialist Republic and People's Republic of Bulgaria

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

8.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Rumunskou socialistickou republikou

Publication reference: No. 64/1974 Zb.

Entry into force: 24.03.1974

English title: Consular Convention between Czechoslovak Socialist Republic and Romanian Socialist Republic

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

9.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Maďarskou ľudovou republikou

Publication reference: No. 50/1974 Zb.

Entry into force: 20.02.1974

English title: Consular Convention between Czechoslovak Socialist Republic and People's Republic of Hungary

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

10.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Kubánskou republikou

Publication reference: No. 14/1975 Zb.

Entry into force: 17.01.1975

English title: Consular Convention between Czechoslovak Socialist Republic and Republic of Cuba

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

11.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Spojenými štátmi americkými

Publication reference: No. 28/1988 Zb. 07.11.1987

English title: Consular Convention between Czechoslovak Socialist Republic and U.S.A.

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

12.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Indickou republikou

Publication reference: No. 8/1980 Zb.

Entry into force: 04.02.1980

English title: Consular Convention between Czechoslovak Socialist Republic and Republic of India

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

13.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Talianskou republikou

Publication reference: No. 42/1979 Zb.

Entry into force: 13.04.1979

English title: Consular Convention between Czechoslovak Socialist Republic and Republic of Italy

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

14.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Spojeným kráľovstvom Veľkej Británie a Severného Írska

Publication reference: No. 135/1976 Zb.

Entry into force: 14.10.1976

English title: Consular Convention between Czechoslovak Socialist Republic and United Kingdom of Great Britain and Northern Ireland

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

15.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Mongolskou ľudovou republikou

Publication reference: No. 47/1977 Zb.

Entry into force: 20.06.1977

English title: Consular Convention between Czechoslovak Socialist Republic and People's Republic of Mongolia

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

16.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Belgickým kráľovstvom

Publication reference: No. 41/1979 Zb.

Entry into force: 13.04.1979

English title: Consular Convention between Czechoslovak Socialist Republic and Kingdom of Belgium

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

17.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Cyperskou republikou

Publication reference: Law No. 74/1979 Zb.

Entry into force: 17.07.1979

English title: Consular Convention between Czechoslovak Socialist Republic and Republic of Cyprus

Summary: Norms regulating establishment of representations, their privileges and functions
Very detailed regulatory framework similar to Vienna Consular Convention

18.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Tureckou republikou

Publication reference: No. 33/1980 Zb.

Entry into force: 26.03.1980

English title: Consular Convention between Czechoslovak Socialist Republic and Republic of Turkey

Summary: Norms regulating establishment of representations, their privileges and functions
Very detailed regulatory framework similar to Vienna Consular Convention

19.

Title: Dohoda medzi Československou socialistickou republikou a Rakúskou republikou o konzulárnych stykoch

Publication reference: No. 22/1981 Zb.

Entry into force: 01.02.1981

English title: Agreement between Czechoslovak Socialist Republic and Austrian Republic on Consular Relations

20.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Tuniskou republikou

Publication reference: No. 44/1981 Zb.

Entry into force: 21.02.1981

English title: Consular Convention between Czechoslovak Socialist Republic and Republic of Tunis

Summary: Norms regulating establishment of representations, their privileges and functions
Very detailed regulatory framework similar to Vienna Consular Convention

21.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Sýrskou arabskou republikou

Publication reference: No. 101/1983 Zb.

Entry into force: 11.06.1983

English title: Consular Convention between Czechoslovak Socialist Republic and Arab Republic of Syria

Summary: Norms regulating establishment of representations, their privileges and functions
Very detailed regulatory framework similar to Vienna Consular Convention

22.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Gréckou republikou

Publication reference: No. 18/1985 Zb.

Entry into force: 15.01.1985

English title: Consular Convention between Czechoslovak Socialist Republic and Republic of Greece

Summary: Norms regulating establishment of representations, their privileges and functions
Very detailed regulatory framework similar to Vienna Consular Convention

23.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Socialistickou Etiópiou

Publication reference: No. 119/1982 Zb.

Entry into force: 03.09.1982

English title: Consular Convention between Czechoslovak Socialist Republic and Socialist Republic of Ethiopia

Summary: Norms regulating establishment of representations, their privileges and functions
Very detailed regulatory framework similar to Vienna Consular Convention

24.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Afgánskou demokratickou republikou

Publication reference: No. 33/1983 Zb.

Entry into force: 02.12.1982

English title: Consular Convention between Czechoslovak Socialist Republic and Afghan Democratic Republic

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

25.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Socialistickou federatívnou republikou Juhosláviou

Publication reference: No. 42/1983 Zb.

Entry into force: 14.10.1982

Bosna and Hercegovina, Croatia, Macedonia, Serbia and Monte Negro

English title: Consular Convention between Czechoslovak Socialist Republic and Socialist Federal Republic of Yugoslavia

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

26.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Jemenskou ľudovou demokratickou republikou

Publication reference: No. 43/1986 Zb.

Entry into force: 03.02.1986

English title: Consular Convention between Czechoslovak Socialist Republic and People's Democratic Republic of Yemen

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

27.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Laoskou ľudovodemokratickou republikou

Publication reference: No. 46/1987 Zb.

Entry into force: 26.02.1987

English title: Consular Convention between Czechoslovak Socialist Republic and People's Democratic Republic of Laos

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

28.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Alžírskou demokratickou a ľudovou republikou

Publication reference: No. 48/1987 Zb.

Entry into force: 26.03.1987

English title: Consular Convention between Czechoslovak Socialist Republic and People's Democratic Republic of Algeria

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

29.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Irackou republikou

Publication reference: No. 81/1987 Zb.

Entry into force: 21.08.1987

English title: Consular Convention between Czechoslovak Socialist Republic and Republic of Iraq

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

30.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Kórejskou ľudovodemokratickou republikou

Publication reference: No. 96/1989 Zb.

Entry into force: 25.9.1989

English title: Consular Convention between Czechoslovak Socialist Republic and People's Democratic Republic of Korea

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

31.

Title: Konzulárny dohovor medzi Československou socialistickou republikou a Čínskou ľudovou republikou

Publication reference: No. 97/1989 Zb.

Entry into force: 25.09.1989

English title: Consular Convention between Czechoslovak Socialist Republic and People's Republic of China

Summary: Norms regulating establishment of representations, their privileges and functions

Very detailed regulatory framework similar to Vienna Consular Convention

32.

Title: Oznámenie o podpísaní Dohody medzi vládou Slovenskej republiky a spolkovou vládou Rakúskej republiky o vzájomnom zastupovaní prostredníctvom diplomatických misií a konzulárnych úradov svojich štátov v konaní o udelenie víza

Publication reference: No. 544/2009 Zb.

Entry into force: 01.12.2009

English title: Notification on Agreement between Slovak Republic Government and Austrian Republic Federal Government about Mutual Representation through their Diplomatic Missions and Consular Offices in Visa Granting Proceedings

33.

Title: Zákon o zahraničnej štátnej službe

Publication reference: Law No. 151/2010 Z.z.

Entry into force: 01.07.2010

English title: Foreign Service Act

Summary: Regulation of employment relations in relation to the foreign service execution and establishes the principles of such service; regulation of position, establishment and closure and termination of representative bodies and their functions; diplomatic ranges, rights and obligations of employees in foreign service

[Circulars, internal guidelines](#)

34.

Title: - Konzulárna smernica

- Metodický pokyn o konzulárnej ochrane občanov EÚ

- Ostatné vnútorné smernice a rozhodnutia MZV SR

Publication reference: Not published

English title: - Consular Guideline

- Systematic Directive on Consular Protection of EU Citizens

- Other internal guidelines and directives of the Ministry of Foreign Affairs of the Slovak Republic

35.

Title: Sadzobník konzulárnych poplatkov

Publication reference: internal guideline available online at the website of Ministry of Foreign Affairs www.mzv.sk

English title: Scale of Consular Fees

[Websites, reports](#)

36.

Title: Stredisko pre pomoc a služby občanom

Publication reference: www.mzv.sk

English title: Ministry of Foreign Affairs – Citizens' Service

37.

Title: Výročná správa Ministerstva zahraničných vecí Slovenskej republiky 2007

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38.

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39.

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Slovenia - Slovenija (SI)

1. Introduction

This Report contains the legal framework and national practice of Slovenia on consular (and diplomatic) protection as of 1 June 2010.

The sources for the preparation of this Report are books and articles on international law and diplomatic and consular law by Slovenian authors, the official websites of the Slovenian Ministry of Foreign Affairs¹, Ministry of the Interior², the Constitutional Court of the Republic of Slovenia³ and most importantly personal interviews with officials from the Ministry of Foreign Affairs⁴ as well as related internal documents.

2. Legal framework

Slovenia's legal framework in the area of consular protection consists of: obligations deriving from multilateral and bilateral treaties to which it is a Party to, obligations under EC treaty and its relevant national legislation. Moreover, **consular protection (assistance) in specific cases sometimes derives from informal arrangement (e.g., with Austria), while in some cases it is provided as a matter of policy.**

2.1. International law

Multilateral level:

Slovenia **is a party** to the following multilateral conventions:

- Vienna Convention on Consular Relations – since 6 July 1992 (succession after former Yugoslavia). No reservations have been made.
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (CETS 80) – since 6 December 1998.
- Convention on the Transfer of Sentenced persons, 21 March 1983 (CETS 112) - since 1 January 1994.

Slovenia **is not a party** to:

- Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes.
- European Convention on the Compensation of Victims of Violent Crimes (1983).
- Berlin Agreement concerning the conveyance of corpses of 10 February 1937.

Slovenia is not a Party to other multilateral treaties on consular protection.

Bilateral level:

Slovenia has concluded a number of bilateral agreements based on the Schengen rules through an exchange of diplomatic notes.

¹ <http://www.mzz.gov.si/>

² <http://www.mnz.gov.si/>

³ <http://www.us-rs.si/en/>

⁴ Ms Irena Gril, Minister Plenipotentiary, and Ms Mateja Lesar Markovič, I Secretary, both from the Consular Division.

Bilateral agreements in the field of representation in visas procedures were concluded with a number of other Member States (e.g., Italy, Hungary, Austria, Poland, France, Belgium etc.). These agreements in the form of the exchange of diplomatic notes follow the same pattern. An operative part expresses the request for representation and when consent is received by the other contracting Party in its diplomatic note, an additional diplomatic note by the requesting State is sent to the other State by the requesting State to confirm the date of applicability of the established agreement. These notes also include a passage regarding the notification to the Council of the EU's Secretariat about the concluded representation agreement which is to be conducted in accordance with relevant national procedures. An example: Slovenia's Ministry of Foreign Affairs in its diplomatic note sent to the Embassy of Italy on 24 July 2008, in this operative paragraph stated:

'The Ministry of Foreign Affairs of the Republic of Slovenia renders thanks to the Republic of Italy, and with this note confirms the representation in Azerbaijan (Baku), where the Republic of Italy will be representing the Republic of Slovenia in visa matters, starting from the date of October, 1, 2009.

According to the relevant procedures the Republic of Slovenia will be notifying the EU Council secretariat of this representation agreement.' (unofficial translation)

Detailed information on the agreements for representation in visas procedures is available on the webpage of the Ministry of Foreign Affairs⁵, including addresses of the diplomatic missions and consular posts that are authorized to issue Slovenian visas.

Furthermore, in October, 2007, Slovenia established a **Common visa application centre (CVAC) in Podgorica (Montenegro)** within the premises of the Slovenian embassy. There are already 11 Member States participating in this CVAC. Slovenia also participates in **the CVAC in Chisinau (Moldova)** operating within the Hungarian embassy.

Slovenia also provides consular assistance to Macedonian citizens in need in Argentina and Japan based on the arrangement between the MFA of Slovenia and the MFA of Macedonia.

Before the Slovenian EU membership diplomatic and consular assistance to Slovenian nationals was regularly provided by Austrian representations in third countries under a bilateral agreement concluded between Slovenia and Austria in 1991 (even before Slovenia's international recognition by the EU Members States). Financial means for such assistance were provided by Slovenia. The agreement was concluded without the termination date and was never denounced by any of the Parties, however **since 2004 (Slovenia's membership in the EU) according to the informal agreement it has not been used in practice as a legal basis for the assistance Austria's representations still (informally) provide to Slovenian nationals in need.**

Furthermore, **Slovenia concludes formal and informal burden-sharing agreements with other states.** Informally Slovenia endeavours to agree with other states on the burden-sharing when the need arises in each particular case in the absence of the formal agreement. **An example would be an agreement reached with Germany in Phnom Penh in February 2009.** This was an ad hoc local informal agreement between States' representatives present in the field.

⁵ http://www.mzz.gov.si/en/visa_information/

2.2. Transposition of international law into national law

The Constitution of the Republic of Slovenia in its Article 8, which can be considered the core, but not the exclusive, provision defining the relationship between international and national law in Slovenia, states: ‘**laws and regulations must comply with generally accepted principles of international law⁶ and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly**’. This provision gives room for either a monistic or a dualistic approach in respect to the position of international law within the national law of Slovenia. It is in principle based on the supremacy of international law over all domestic norms of non-constitutional character (but not over the Constitution), which has been recognized in decisions of the Constitutional Court.⁷ However, the constitutional diction that ratified and published treaties shall be applied directly must be understood only as a declaration for the adoption of treaties and their provisions into the legal order of Slovenia, and not necessarily as a declaration of their *de facto* direct applicability. Direct applicability and consequently the possibility of their direct invocation by individuals before domestic courts depends on the quality of particular treaties and their provisions. Only self-executing treaties and self-executing treaty provisions can be applied directly. Therefore, the question whether a treaty or its provision is capable as such of establishing, after the ratification and publication in the Official Gazette of the Republic of Slovenia, rights and obligations for legal and natural persons, depends above all on how exhaustive is its content and how its provisions are formulated. If treaties or treaty provisions are non-self-executing, it is necessary to adopt internal legal measures (laws/regulations) to fulfil relevant treaty obligations.

Furthermore, Article 153, paragraph 2, of the Constitution concretises the issue of hierarchy among internal legislation and international law and specifies that ‘laws must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly, whereas regulations and other general legal acts must also be in conformity with other ratified treaties’. The Foreign Affairs Act ensures also the procedural primacy of treaties, since it provides (Article 87) that in a case of conflict between provisions of a treaty on the one hand and provisions of a law or other regulation on the other hand, a treaty has to be applied until the competent authority reaches a decision. It is in the competence of the Constitutional Court to decide on the conformity of internal legislation (laws and other regulations) with ratified treaties and with general principles of international law.⁸ The review of the constitutionality and legality of regulations and general acts issued for the exercise of public authority also extends to a review of the conformity of laws and other regulations with ratified treaties and with the general principles of international law.⁹

2.3. Implementation of European law into national law

With regard to implementation of EU law into national law Article 3.a of the Slovenian Constitution (added in year 2003, Official Gazette of the Republic of Slovenia, No. 24/03) is of particular relevance. It states:

⁶ This term includes: general principles of international law, general principles of law (recognized by civilized nations) and norms of customary international law.

⁷ M. Skrk, ‘The Constitutional Court of Slovenia and Its Role as an Intermediary Between National and International Law’, in A.S. Muller and M.A. Loth (eds), *Highest Courts and the Internationalisation of Law, Challenges and Changes*, Hague Academic Press, The Hague 2009, 89.

⁸ See Article 160 (I) ii of the Constitution and Article 21 (I) ii of the Constitutional Court Act.

⁹ See Article 22 (II) of the Constitutional Court Act.

'Pursuant to a treaty ratified by the National Assembly by a two-thirds majority vote of all deputies, Slovenia may transfer the exercise of part of its sovereign rights to international organizations which are based on respect for human rights and fundamental freedoms, democracy and the principles of the rule of law and may enter into a defensive alliance with states which are based on respect for these values.

Before ratifying a treaty referred to in the preceding paragraph, the National Assembly may call a referendum. A proposal shall pass at the referendum if a majority of voters who have cast valid votes vote in favour of such. The National Assembly is bound by the result of such referendum. If such referendum has been held, a referendum regarding the law on the ratification of the treaty concerned may not be called.

Legal acts and decisions adopted within international organisations to which Slovenia has transferred the exercise of part of its sovereign rights shall be applied in Slovenia in accordance with the legal regulation of these organisations.

In procedures for the adoption of legal acts and decisions in international organisations to which Slovenia has transferred the exercise of part of its sovereign rights, the Government shall promptly inform the National Assembly of proposals for such acts and decisions as well as of its own activities. The National Assembly may adopt positions thereon, which the Government shall take into consideration in its activities. The relationship between the National Assembly and the Government arising from this paragraph shall be regulated in detail by a law adopted by a two-thirds majority vote of deputies present.'

Hence, Slovenia (according to Article 3.a, para. 3 of the Constitution) recognizes that **all legal acts and decisions adopted within the EU shall be applied in Slovenia in accordance with the EU's legal regulation.**

Slovenia has implemented Article 23 TFEU and Decisions 95/553 and 96/409 through amendments to the Foreign Affairs Act in 2008 [OG, No. 76/08 (25 July 2008)] and 2009 [OG, No. 108/09 (28 december 2009)].

2.4. Documentation of consular protection

Documentation on Slovenian practice on consular protection is being compiled only for **internal use** by the Ministry of Foreign Affairs and has not been made publicly available to this date.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Slovenian bilateral agreements with third countries do not include provisions protecting Union citizens working and living in third countries.

Slovenia has not informed third countries of the practice of extending protection to Union citizens (Art 8 Vienna Convention on Consular Protection).

Slovenian bilateral agreements with third countries do not include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

In general, Slovenia does not extend consular protection to Union citizens' family members who are not nationals of a Member State. **Under the Foreign Affairs Act only Slovenian nationals and other EU citizens are entitled to consular protection. Exceptions exist in individual cases, particularly in cases of evacuations (e.g., evacuation of family members of Slovenian national from Gaza in January 2009). Decisions to offer consular protection also to non-nationals (e.g., family members) are made on case-by-case basis** when the applicant fulfils conditions to legally enter Slovenia as set forth in the Law for Foreigners. **In practice the term "family**

members” includes spouses and children. If a situation of extreme urgency arises, non-nationals can receive a visa at the border. **Slovenia has no special national rules concerning consular protection to persons of dual nationality.**

Until now, Slovenia has not informed third countries of this practice.

Slovenia has not started negotiations concerning agreements with third countries including provisions protecting Union citizens working and living in third countries.

Slovenia has not started negotiations concerning agreements with third countries include provisions extending consular protection to Union citizens’ family members who are not nationals of a Member State.

3.2. Statistical data on consular practice

Slovenia regularly offers consular assistance to its citizens.

Since there is no official publicly available document presenting precise statistical data on the number of reported cases of consular protection offered in third countries over the last 3 years, **the information provided here is based on informal internal documents of the Slovenian Ministry of Foreign Affairs and personal interviews with its representatives.** According to internal information sheets prepared by the Ministry of Foreign Affairs, International Law and Protection of Interests Directorate, Consular Division, for the years 2006-2009 the statistics show that Slovenian authorities issued the following numbers of travel documents:

- national passports for returning to Slovenia:

- 2006: 277
- 2007: 312
- 2008: 285
- 2009: 329

- Emergency travel documents (ETD):

- 2006: 20
- 2007: 20
- 2008: 40
- 2009: 37

- travel documents issued in cases of death (passport for mortal remains):

- 2007: 104
- 2008: 124
- 2009: 151

Furthermore, according to the same data Slovenian authorities offered consular assistance in:

- cases of deprivation of liberty (arrest or detention):

- 2006: 310
- 2007: 219
- 2008: 200

- 2009: 261 **(in 11 instances consular assistance was offered by other EU Member States: in 8 cases by Austria; in 1 case by France and Germany jointly; and in 1 case by Spain)**

- cases of traffic accidents:

- 2007: 136

- 2008: 66

- 2009: 28 (this reflects the number of accidents the Slovenian MFA was informed of and involved in providing consular assistance – in other cases Slovenian embassies offered consular assistance without the involvement of the MFA).

So far there has been only one case of reported protection provided to unrepresented EU citizen (a Czech national in Montenegro, who requested an issuance of the ETD).

On the other hand approximately 100 cases where Slovenian citizens received consular protection from other Member States' embassies have been reported in the period of 2006-2008 (mostly from Austrian, German and Spanish representations in third countries).

Relying on the information received during the personal interview with Ms Gril Slovenian nationals increasingly seek and receive consular assistance from other EU Member States' representations in third countries (e.g., France – Laos, Morocco (ETD); Germany – Dominican Republic (ETD); Spain – Morocco (deprivation of liberty); Austria – Albania, Venezuela, Peru, Colombia, Indonesia (deprivation of liberty); France – Senegal (deprivation of liberty); Austria – Tunis (cases of death); Germany – Tanzania, Nepal (cases of death); Portugal – Brazil (ETD)). Austria has been offering consular assistance to Slovenian nationals in numerous cases of the need for issuance of the ETD.

In 2009 Slovenian embassy in Podgorica (Montenegro) issued ETD to the Slovak national.¹⁰

In 2010 Slovenian nationals were issued ETDs in 1 case in Costa Rica by Czech embassy and in 1 case in Cuba by Hungarian embassy.¹¹

Some concerns were expressed as to the fact that embassies of some Member States (e.g., Germany, France, United Kingdom, Belgium) instead of issuing ETDs insist on issuing their national return documents also for nationals of other Member States and regarding the fact that the prices of ETDs vary (from 10 -30 Euro) at embassies of different Member States.

Due to extremely limited experience Slovenia has not yet encountered any problems providing assistance to Union citizens.

4. Consular protection in detail

National rules regulating matters relating to consular protection and assistance to Slovenian and EU citizens are included in:

- **Foreign Affairs Act** [Official Gazette of the Republic of Slovenia (hereinafter: OG), Nr. 113/03 (20. 11. 2003)] and amendments to the Foreign Affairs Act [OG, No. 76/08 (25 July 2008)] and amendments adopted on 15 December 2009 [OG, No. 108/09 (28 december 2009)];
- **Instruction for Honorary Consular Officers of the Republic of Slovenia** (issued by the Minister of Foreign Affairs of the Republic of Slovenia – number ZKD-1154/07, date: 21 March 2007);

¹⁰ Information provided by Ms Grill.

¹¹ Information provided by Ms Grill.

- **Travel Documents Act** (official consolidated version) (ZPLD-1-UPB3), published in: OG, No. 62/2009 (4 August 2009).

Under Article 24 of the Foreign Affairs Act a consulate of the Republic of Slovenia shall among other functions protect the interests of the Republic of Slovenia and its citizens and legal entities, and conduct consular-legal affairs. This very broad provision is supplemented by a reference to one specific consular function, i.e., to attend to the labor-law and social security of citizens of the Republic of Slovenia working in the receiving State. In addition, the second paragraph of Article 24 states that a consulate shall, abiding by international law, also carry out other duties provided for by regulations and instructions issued by the Minister of Foreign Affairs. Important amendments were introduced by Article 4, paragraph 1, of the Act on Amendments and Modifications of the Foreign Affairs Act (which becomes Article 24.a of the consolidated version of the Foreign Affairs Act), published in OJ, Nr. 76/08 (25.7.2008) which reads as follows:

“The Republic of Slovenia ensures protection to citizens of the European Union, as envisaged by the Decision of the Representatives of the Governments of the Member States meeting within the Council of 19 december 1995 regarding the protection for citizens of the European Union by diplomatic and consular representations (95/553/EC), namely:

- assistance in cases of death,
- assistance in cases of serious accident or serious illness,
- assistance in cases of deprivation of liberty,
- assistance to victims of violent crime and
- the relief and repatriation of distressed citizens of the European Union.”¹²

This provision therefore refers to all EU citizens, including Slovenian nationals. At the same time it is important to observe that **the Foreign Affairs Act envisages the consular protection offered to Slovenian nationals in a general clause, while it limits the protection offered to all EU citizens to the exhaustively listed cases.**

Further amendments to the Foreign Affairs Act (adopted on 15 December 2009) added to this provision also the content of the second paragraph of Article 5 of Decision 95/553/EC.

Slovenia has not issued the guidelines on the application of Decision 95/553/EC as formal instructions to their diplomatic and consular representations in third countries as formal instructions in a written form. However, it regularly provides oral instructions on how to apply Decision 95/553/EC to its diplomatic and consular members of the missions, during their preparation for the mission as well as during their regular training.

Relevant case law on the rules for consular protection does not exist.

4.1. General

The Slovenian Foreign Affairs Act does not use the expression “right to consular protection”. Nevertheless, it provides that a consulate of the Republic of Slovenia shall among other functions protect the interests of the Republic of Slovenia and its citizens and legal entities, and conduct consular-legal affairs (Article 24) and that the Republic of Slovenia ensures protection of citizens of the European Union, as envisaged by Decision 95/553/EC (Article 24.a). The term “ensures” used in the Article

¹² Unofficial translation by the Author of the Report.

24.a could be understood as stipulating some level of obligation on the part of Slovenia which could be interpreted as establishing, as its counter-part, a right of individuals to request such protection. As evident from the mentioned two articles only Slovenian and other EU Member States' nationals are entitled to consular protection. In case of any other person, not being a national of one of the EU Member States the decision is adopted in each particular case dependent on the circumstances and on the condition that the person fulfils the criteria, embodied in the Law for Foreigners, to legally enter Slovenia.

The underlying legal values of consular protection offered by Slovenian authorities are the protection of the person's life or health and his/hers personal freedom and security. Since those are the cases (death, serious accident or illness, deprivation of liberty, violent crimes, relief and repatriation in distress) which are also specifically enumerated under the Article 24.a (which is the only Article that uses the term "ensures"), these cases are most likely also the ones where an individual could possibly claim a right to consular protection. **In all other cases the provision of consular protection depends on the discretionary power of Slovenian authorities as it is generally meant to facilitate living and business of nationals abroad, when their vital interest are not endangered.**

There are no formal mechanisms or procedures in force for the exercise of consular protection. The person in need establishes contact with the competent representation in a foreign country which then provides the necessary consular assistance.

In practice the consular assistance to Slovenian nationals has been refused only in cases where the relatives/friends were unwilling or unable to provide financial means for the person in need. Even in certain situations of that kind individual diplomatic and consular officers have lent their own money to persons in need upon a promise that they will reimburse it after they return to their home country.

There have been no official guidelines issued that would determine possible limits or other restrictions applicable to the provision of consular protection. The decisions are taken on an ad hoc basis dependent on the circumstances of each particular case.

There exists no special complaint procedure in a case of rejection of consular assistance. However, since Slovenian legislation (Foreign Affairs Act) states that Slovenia ensures protection, it remains unclear whether in the case of refusal an injured party could bring the case before domestic courts alleging the breach of a State's obligation under its national legislation.

4.2. Assistance in cases of death

Slovenian diplomatic or consular missions **inform** the national authorities which contact the next-of-kin. They **provide assistance** by issuing a passport for mortal remains and offering other necessary assistance to the relatives in such situations, such as in repatriation of the corpse (mainly as a coordinator between the relevant institutions and relatives of the deceased person – especially through the transmission of information). Normally assistance is provided only to relatives of the deceased person. Everyone else (e.g., non-family members) needs an authorization by the relatives. **Slovenian authorities have so far in practice required written assurances by the relatives or friends of the deceased person in Slovenia that they (or insurance coverage) will provide necessary financial means.** If they were unable or unwilling to

provide it, they were asked to submit a certified declaration expressing their agreement that the deceased person is buried in a nameless grave.

4.2.1. Identifying and repatriating remains

In addition to the information under the previous heading: Slovenia is a party to the 1973 Council of Europe's Agreement on the Transfer of Corpses, but neither to the 1983 European Convention on the Compensation of Victims of Violent Crimes, nor to the Berlin Arrangement concerning the conveyance of corpses of 10 February 1937. The ministry designated (in the act on ratification of the treaty, published in OJ, No. 72/98 (23.10.1998)) for the implementation of the 1973 Strasbourg Convention is the Ministry of Health of the Republic of Slovenia.

Since the entry into force for Slovenia of the 1973 Agreement on the Transfer of Corpses in 1998, Slovenia experienced a significant simplification in the processes of transfer of corpses in cases where States were parties to this treaty. Formalities required for the international transfer of corpses through a uniform mortuary "laissez-passer" were largely reduced. The practice shows that the set maximum conditions that a State Party can require for the dispatch, transit and admission of corpses on its territory materially affect and facilitate the whole process for all parties concerned and substantially shorten its duration. Slovenian embassies and consulates have to deal with approximately 30 cases of deaths per representation (in Europe) each year, and the simplification of procedures provided by the Agreement remains of high importance to Slovenia.

4.3. Assistance in cases of serious accident or serious illness

Slovenian authorities give necessary assistance, mostly through their role as a coordinator. If the person so wishes or they are requested to do so by the competent authorities (e.g., psychiatric institutions) the Slovenian authorities notify the family or employer of the condition of the person wounded or sick. Medical repatriation is provided when it is needed for medical reasons or wishes of relatives/friends, who must (as in cases of death) arrange for financial coverage of such repatriation.

4.4. Assistance in cases of arrest or detention

Members of Slovenian diplomatic or consular missions pay **visits to the detainee** whenever possible. If necessary they assist in transmitting a petition for pardon or early release to the competent authorities and discuss the issue with the authorized officials at the Ministry of Foreign Affairs or the Ministry of Justice. In case of need they provide a detainee with a list of lawyers (for the necessary legal aid). With the consent of the detainee they inform the national authorities of the situation.

The **transfer of sentenced persons** is organized in accordance with the Council of Europe's Convention on the Transfer of Sentenced persons (1983).

During the Slovenian presidency of the Council of the EU (January - June 2008) a lot of attention was focused on the position of detainees in third countries, access to them and information provided to States of their nationality, in particular in Latin America, some countries of the Middle East, Africa and Asia, including the preparation of the analysis of the situation and proposals of necessary measures.

4.5. Assistance to victims of violent crime

Slovenian diplomatic or consular missions **help the victims with legal and administrative arrangements in the third country** (e.g., authentication of signature, taking declarations, informing competent organs and institutions). All the measures are taken in cooperation with relevant State authorities and, if appropriate, non-governmental organizations.

4.6. Relief and repatriation of distressed citizens

Slovenian diplomatic or consular **missions provide advice and assistance. Evacuations are organized in case of urgent necessity** (e.g., citizens are repatriated in cases of severe natural disasters or political riots endangering the applicant). In such situations Slovenia follows the Lead State concept and the payment arrangements are made on a pro-rata basis as foreseen in point 12. 9. of the 2006 guidelines on consular protection.

In case of the *tsunami* which struck Southern Asia in 2004 the Netherlands coordinated the assistance provided to 2 Slovene nationals for their return home.

4.6.1. Natural disasters

Slovenian consular or diplomatic authorities promptly establish **contacts with citizens** caught in the situation of natural disasters in order to provide support and, if necessary, organize **evacuations** as soon as possible (e.g., flooding in Myanmar in 2008). There were no Slovenian nationals who required evacuations in case of Haiti disaster. During the flooding caused by an earthquake in Chile in 2010 one Slovenian national asked for assistance at the Spanish embassy (at the time holding the Presidency of the Council of the EU), but there is no information on how he finally returned to Slovenia.

4.6.2. Terrorist acts

Slovenian diplomatic or consular missions provide **support to citizens** who are affected by terrorist attacks. However, there are no reported cases of Slovenian citizens in distress due to terrorist attacks in need of consular assistance.

4.6.3. Pandemics

Slovenian diplomatic or consular missions **contact local authorities** in order to provide support to citizens if they are involved (e.g., 2009 flu pandemic in Mexico).

4.6.4. Military conflicts

Slovenian consular or diplomatic missions **contact local authorities** in order to provide support to citizens if they are involved. **Evacuations**, in cooperation with other countries, are organized immediately if necessary (e.g., Bangkok - November 2008, Kenya - January 2008, Gaza - January 2009).

In case of military conflict in **Lebanon** in 2006 the repatriation of Slovenian citizens was organized with the assistance of Slovenian honorary consul in Lebanon and with help of Germany (holding Presidency of the Council of the EU at the time) and France, which assisted in the sense of the later developed Lead State concept. 2 Slovenian nationals were flown to Vienna with the assistance of Austria, 2 to Cyprus with the assistance of Italy, 1 to Madrid with the assistance of Spain (Spain organized also connecting flight to Slovenia) and 1 to Frankfurt with the assistance of Germany.

During the military conflict in *Georgia* in 2008 two Slovenian nationals were evacuated with the assistance of Slovenian honorary consul in Georgia and Slovenian embassy in Kiev (Ukraine).

4.6.5. Financial advances

Financial advances and repatriation to the home country will be provided only at utmost urgency and under the condition that the funds will be reimbursed at a later stage.

In principle, payment is given only on a pro-rata basis.

An amendment to the Foreign Affairs Act (Article 5) from 2008 introduces also a provision on the means for assistance (new Article 24. b) which states that **the Ministry of Foreign Affairs can in an urgent case advance necessary (financial) means to distressed Slovenian nationals abroad. The Ministry of Foreign Affairs allocates financial means for this purpose in its budget. However, this financial advance (the individually determined sum necessary for return to Slovenia) is only meant to be a loan and a Slovenian national must repay the financial advance** after his/her return to Slovenia or to the diplomatic mission or consulate of the Republic of Slovenia in the State of his/hers permanent residency, if this is in a foreign State. An urgent case is described as an exceptional situation when an individual has no one who could, through the Ministry of Foreign Affairs or in any other usual manner, transfer the necessary financial means for the urgent elementary care and return to the home country. It furthermore provides that detailed rules on the establishment of eligibility for the advancement of payment are to be regulated by the regulation of the Government (such a regulation is under preparation and is expected to be adopted in 2010 - after the agreement on its modalities is reached between the Ministry of Foreign Affairs and the Ministry of Finance – the obstacle for its adoption is the fact that the existing legislation does not allow for the phased payments for the return of the loan – to remedy this Slovenia would need to amend its Public Finance Act).

Due to the lack of experience with financial advances to unrepresented EU citizens it is not possible to comment on the functioning of existing procedures in practice. However, Slovenia would, in case a need arises, require the authorization of the other Member State before giving a financial advance to other EU citizens.

5. Emergency travel document (ETD)

All Slovenian diplomatic missions and general consulates are equipped with ETDs.

Honorary consuls are not deemed competent to issue travel documents.

Additionally:

On 28 August 2006 Slovenia (in accordance with Council Regulation (EC) No. 2252/2004) started issuing biometric passports with facial image biometric data, and on 28 June 2009 biometric passports including a facial image and two fingerprints.¹³

¹³ Pursuant to the amended Travel Documents Act (see the CARE database) which introduces fingerprint biometric data and which entered into force on 16 June 2009 (published in the Official Gazette of the RS No. 41/2009), 9 types of biometric passports are issued in the Republic of Slovenia, including: 32-page passport; 48-page passport; 32-page passport in the Slovenian-Italian language version; 48-page passport in the Slovenian-Italian language version; 32-page passport in the Slovenian-Hungarian language version; 48-page passport in the Slovenian-Hungarian language version; Diplomatic passport; Service passport; Passport for aliens. As regards biometric data, the Travel Documents Act and the Rules Implementing the Travel Documents Act stipulate:

All Slovenian passports issued after 1 March 2001 will remain valid until the date of expiry, and the citizens are not required to exchange their passport for a new one, unless they specifically wish to.

Passport applications may be filed with the competent authorities, i.e., at an administrative unit or a diplomatic mission or consular post; the fee varies accordingly. The passport features were described in an information brochure from August 2006 when biometric passports were first introduced.

The differences between the first- and the second-generation biometric passports of the Republic of Slovenia are as follows:

- The data written in all the official languages of the European Union have been supplemented with Romanian and Bulgarian translations;
- An extra empty field has been added on page 3, enabling the insertion of another permanent address;
- The text of Article 23 TFEU on the inside back cover containing information on consular assistance has been amended¹⁴

More information is available on the Ministry of the Interior website¹⁵.

Slovenia informed other EU Member States of this development through COREU in March 2009 and sent a *note verbale* to all representations accredited to Slovenia in August 2009.

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- For citizens older than 12 years, two fingerprints are captured upon filing an application. As a general rule, the citizen's left-hand and right-hand index fingers – or, should the index finger be of inappropriate quality, the middle finger, ring finger or thumb – are scanned, the exception being medical conditions.
 - If it is impossible to take a citizen's fingerprints owing to an acute medical condition (e.g., burns, cuts or other injuries which are expected to heal within a year), a passport containing only facial image biometric data is issued with the validity of 12 months.
 - If it is impossible to take a citizen's fingerprints owing to a lasting medical condition (e.g., a person without fingers or with lifelong injuries), a passport containing only facial image biometric data is issued with a standard validity.
 - The fingerprints are stored in the passport database only for the purpose of issuing the passport (to store data on a storage medium, i.e., a microchip) and are deleted from it once the passport has been handed over.
 - The biometric data on fingerprints are stored solely on the passport chip and can only be used for the purposes of border controls. The holder's biometric data are thus protected to the highest possible degree.

¹⁴ A biometric passport contains an embedded contactless chip storing biometric data on the passport holder. Second-generation biometric passports including fingerprint data contain a Smart MX 80k CC EAL4+ PP0026 (EAC) chip which is compatible with the ISO/IEC 14443 standard. The operating system is MTCOS V2.1 with ICAO TRLDS, TrPKI, ISO 7816, 3DES, RSA, including BAC-AA-ECC-EAC. The chip stores basic data on the passport holder, which are also included on the biographical data page, biometric data (a facial image and two fingerprints) and elements for digital data protection. Passport data are stored as files digitally signed by the issuing country. The digital signature guarantees that the data cannot be altered and that no one except the issuing country can generate the files, although being in possession of an empty, writable chip. The data on the chip can only be written once (WORM - WriteOnceReadMany), i.e., the digital data are read-only and designed to be read only when the passport is opened. A unique encryption key to access chip data is generated on the basis of a machine readable zone (MRZ) scan. For this purpose the passport has to be opened and placed on a chip reader. Apart from Basic Access Control (BAC), which prevents scanning passports from a distance, Extended Access Control (EAC) is mandatory to protect sensitive personal data (fingerprints).

¹⁵ <http://www.mnz.gov.si/si/splosno/cns/novica/article/2049/6374/011307aefd/>

6. Relevant diplomatic protection

There exists no right to diplomatic protection in Slovenia. The decision to offer it to its citizens is taken on a case-by-case basis.

7. Exercise of consular functions for expats

Slovenia offers to its expats regular consular assistance. Since there is no duty of Slovenian nationals living abroad to inform Slovenian officials of this fact, **Slovenian diplomatic and consular missions can not keep records of Slovenian expats**. There exists no organization of special structures, where officials are specially educated for providing assistance to expats. Slovenia also does not develop special contingency planning nor organize contact points for expats.

8. Summary

Slovenia is a party to the most important international treaties on consular relations and has concluded a number of bilateral treaties. Cooperation with some States is based on informal arrangements. **Slovenian citizens usually request consular assistance from representations of EU Member States that are linguistically close to them. In the majority of the cases of assistance in third countries where Slovenia is not represented, Slovenian citizens turn to Austrian consular or diplomatic missions.**

Assistance to EU citizens is provided according to Article 23 TFEU. So far, extremely limited experience exists. For evacuation actions in international conflicts, the ad hoc co-operation between EU Member States has proven to be very helpful.

Slovenia (the Ministry of Foreign Affairs) maintains and regularly updates its websites providing relevant information on consular assistance and issues informative hard copies available to its citizens in Slovenian language.

9. List of important documents

International Treaties

1.

Title: Dunajska konvencija o konzularnih odnosih

Publication reference: Official Gazette of the SFRY – International agreements, No. 5/66 (official Slovenian version was never published in Official Gazette of the Republic of Slovenia)

Entry into force: The former Yugoslavia had signed and ratified the Convention on 24 April 1963 and 8 February 1965, respectively. Slovenia's succession of it is effective since 6 July 1992.

English title: Vienna Convention on Consular Relations, Vienna, 24 April 1963

2.

Title: Sporazum o prevozu trupel

Publication reference: Official Gazette of the Republic of Slovenia, No. 18/98

Entry into force: 6 December 1998

English title: Agreement on the Transfer of Corpses (CETS 80)

3.

Title: Konvencija o transferju obsojenih oseb

Publication reference: Official Gazette of the Republic of Slovenia, No. 44/93

Entry into force: 1 January 1994

English title: Convention on the Transfer of Sentenced Persons (CETS 112)

French title: Convention sur le transfèrement des personnes condamnées

Slovenia has concluded a number of bilateral agreements through an exchange of diplomatic notes which have not been published in the Official Gazette and are not available to public.

Table of representation for issuing uniform visas shows with which states Slovenia concluded an agreement through an exchange of diplomatic notes and is available at the webpage of Slovenian Ministry of Foreign Affairs and regularly updated:
http://www.mzz.gov.si/fileadmin/pageuploads/konzulara/Annex_18_EN.pdf

National legislation

4.

Title: Zakon o zunanjih zadevah

Publication reference Official Gazette of the Republic of Slovenia, No. 45/01, 78/03, 113/03 - UPB1, 76/08 and 108/09

Entry into force: first adopted in 1991; a new one adopted in 2001 and amended several times

English title: Foreign Affairs Act

5.

Title: Zakon o potnih listinah

Publication reference: Official Gazette of the Republic of Slovenia, No. 62/09

Entry into force: 29 August 2009

English title: Travel Documents Act

Rules, circulars, internal guidelines

6.

Title: Pravilnik o izvrševanju Zakona o potnih listinah

Publication reference: Official Gazette of the Republic of Slovenia, No. 84/06

Entry into force: 23 August 2006 (became applicable on 28 August 2006)

English title: Rules on execution of the Travel Documents Act

7.

Title: Navodilo za častne konzularne funkcionarje Republike Slovenije (issued by the Minister of Foreign Affairs of the Republic of Slovenia – number ZKD-1154/07)

Publication reference: not published, but available online at:

http://www.mzz.gov.si/fileadmin/pageuploads/Zakonodaja_in_dokumenti/Notranji_akti/Navodilo_za_castne_konzularne_funkcionarje_RS.pdf

Entry into force: 5 April 2007

English title: Instruction for Honorary Consular Officers of the Republic of Slovenia

Websites, reports

8.

Title: Vizumske informacije (at the website of the Ministry of Foreign Affairs)

Publication reference: http://www.mzz.gov.si/si/vizumske_informacije/ (in English:

http://www.mzz.gov.si/en/visa_information/)

English title: Visa information



Spain - España (ES)

1. Introduction

This Report contains the legal framework and national practice on consular and diplomatic protection of the Kingdom of Spain (hereinafter “Spain”) as of 30 June 2010. References to Community Law are made to Article 23 of the Treaty on the Functioning of the European Union (“TFEU”) and related legislation.

Spain may be considered as a Member State where information about the legal framework and practice on consular assistance and diplomatic protection is difficult to be retrieved.

This Report is based on the following sources: academic literature on international, diplomatic and consular law in Spain, legal texts and policy documents on diplomatic and consular protection and assistance, the website of the Spanish Ministry of Foreign Affairs and Cooperation, other websites providing relevant information on consular practice, such as the website of the Foundation Ramón Rubial, whose aim is to provide assistance to Spaniards living abroad, as well as on interviews held with officials from the Ministry of Foreign Affairs and Cooperation, which have always been willing to help, and whose information has been crucial for the preparation of this Report.¹

It should be underlined that the publicly available information concerning consular assistance in Spain is scarce.

1.1. Terminology - National acronyms and definitions

BOE: Boletín Oficial del Estado - Spanish Official Journal.

Leyes – Statutes, Laws.

MAEC: Ministerio de Asuntos Exteriores y Cooperación - Spanish Ministry of Foreign Affairs and Cooperation

Servicios Consulares: Consular services

OCER: Oficina de Atención a la Ciudadanía en el Exterior y su Retorno – Assistance Bureau for Citizens Abroad and for their Return.²

Órdenes Circulares: documents governing the functioning of the Ministry of Foreign Affairs and Cooperation (including consular services).

Reales Decretos: Royal decrees, *i.e.*, legal norms issued on the basis of a previously adopted Statute.

¹ In particular, the authors of this report would like to thank, for their valuable help without which this report could have not been prepared, the following people at the Spanish Ministry of Foreign Affairs and Cooperation: Prof. Dr. Concepción Escobar Hernández, General Director of the Legal Service of the Ministry of Foreign Affairs and Cooperation and Professor of International Public Law; Mr. Luis Fernández-Cid de las Alas Pumariño, General Sub-director for Legal Consular Affairs; Mr. Miguel Gómez de Aranda Villén, General Sub-director for Social Affairs; and Mr. Daniel Martínez Jávega, responsible for Consular Agreements.

² It depends from a private Foundation – “Ramón Rubial” – which is quite active in assisting Spanish nationals abroad. Some of their programmes are partially funded by the Ministry of Labour and Social Affairs. Its web site can be consulted at: <http://www.espanolesenelmundo.org/index.php?s=33>

TC: *Tribunal Constitucional* – Constitutional Court³

TS: *Tribunal Supremo* – Supreme Court⁴

2. Legal framework

The legal framework for consular assistance in Spain includes international treaties, both bilateral (often treaties of “Friendship and Cooperation”) and multilateral, obligations under European Union law, laws, royal decrees, and circular orders.

There is neither an official database of the relevant norms – apart from the publication in the Official Journal – nor an official list of the Treaties that have been ratified by Spain. Similarly, there is no official compilation of the State’s practice in this matter.⁵

2.1. International law

Spain has concluded a relevant number of treaties on consular relations, including consular protection and assistance. Some of the Treaties in force entered into by Spain date back to the XIX century (see [Section 9](#)).

Multilateral conventions

Spain is a contracting party to the following multilateral conventions:

- Vienna Convention on Consular Relations, in force since 5 March 1970 (BOE (*Boletín Oficial del Estado*/Official Journal) n. 56, 6 March 1970). No reservations have been made.⁶
- Convention on the Transfer of Sentenced Persons, Strasbourg, 21 March 1983: in force in Spain since 21 October 1994.

Bilateral conventions

Spain has entered into Treaties on Friendship and Cooperation with other States. These Friendship and Cooperation Treaties also deal with consular protection, including protection and assistance of nationals of third countries (see section 9).⁷

Spain has indeed signed many bilateral Treaties, Conventions and Agreements, either on general cooperation issues, including in some cases consular cooperation, or on more specific subjects, such as assistance and transfer of arrested people. Spain seems to rank, in this regard, as one of the States that have signed the largest amount of such Treaties, Conventions and Agreements.

The large number of treaties concerning consular protection signed by Spain might be explained by the strong historical ties between Spain and Latin America, and also by the historical as well as geographical ties between Spain and Northern Africa. Moreover, also for historical reasons, the Philippines have received particular attention as well,

³ www.tribunalconstitucional.es

⁴ <http://www.poderjudicial.es/eversuite/GetRecords?Template=cgpi/ts/principal.htm>

⁵ According to the interviews held with the personnel of the Ministry of Foreign Affairs and Cooperation, there are no projects to compile neither the International Treaties that have been ratified by Spain nor the State’s practice in this field.

⁶ It should be mentioned that Spain is not a party of the Vienna Convention on Consular Relations - Optional Protocol on the Compulsory Settlement of Disputes and that Spain is not a party of the Vienna Convention on Consular Relations - Optional Protocol on Consular Relations concerning Acquisition of Nationality.

⁷ There are no specific provisions concerning the countries in which this protection and assistance are provided, as a general clause for all receiving countries applies. Some specific Circular Orders deal with the details of the cooperation in certain cases, as it happens with Andorra (Circular Order num. 3.208, 18 January 1995), on the basis of the Treaty on Friendship of Cooperation between Andorra, the French Republic and the Kingdom of Spain. There is no specific practice to refer concerning mutual assistance.

what has ultimately led to signature of bilateral agreements. Finally, it should not be disregarded in this context either that **the acquisition of Spanish nationality is fairly easy**, hence leading to an increase of the eligible people for consular protection and assistance.

A list of the Treaties of which Spain is depositary, therefore not only related to consular and diplomatic protection, may be found in the website of the Spanish Ministry of Foreign Affairs and Cooperation.⁸

2.2. *Transposition of international law into national law*

In Spain, International Treaties are part of the law of the land, as long as they have been legally concluded and incorporated into the Spanish legal order by means of their official publication (see Article 96 of the Spanish Constitution). Therefore, International Treaties are *in principle*, according to the Constitution,⁹ not directly applicable, they have first to be officially published.¹⁰ Hence, **Spain qualifies as moderate Dualist State**.

There is an academic discussion on the position of International Treaties in the internal legal order, but for the purposes of this Report, it should be noted that they may not contradict the Spanish Constitution (Article 95 of the Spanish Constitution) and that, once the Treaties are part of the Spanish legal order, there is a duty to apply them in the terms of their ratification.

Special mention should be made to those Treaties related to fundamental rights, as they must guide the interpretation of internal norms – including constitutional norms – in that matter (see Art. 10.2 of the Spanish Constitution). Nevertheless, **diplomatic and consular protection is not considered a fundamental right according to the Constitution**.

Finally, an official compilation of the international diplomatic and consular law that has been transposed to national law has not been carried out to date.

2.3. *Implementation of European law into national law*

European law applies and has primacy over national law for those competences attributed to the European Union (see, for example, the recent declaration of the Spanish Constitutional Court in relation to the Treaty establishing a Constitution for Europe, Declaration DTC 1/2004).

Therefore, **Article 23 of the Treaty on the Functioning of the European Union and Decisions 95/553/EC and 96/409/CSFP are directly applicable in Spain and may not be contradicted by internal legislation**. In case of conflict, the national legislation should be disregarded.

Decision 95/553/EC has been the object of an internal act: Circular Order n. 3.213, of 29 February 1996. This Circular Order includes the text of the Decision,

⁸ It can be visited online in the following link:

<http://www.maec.es/es/MenuPpal/Actualidad/Documentacion/TratadosInternacionales/Paginas/Tratados%20Internacionales.aspx>

⁹ The expression “in principle” should be understood in the following sense: there are some agreements concluded between States which are not formally International Treaties but in which the contents and the dimension of the problem addressed by the agreement might well be considered to be a matter for an International Treaty. As a consequence of this, the agreement will be binding between the States, not with the force International Treaties provide, but yet it might have consequences equivalent to those that might have occurred if an International Treaty ruled on the specific topic.

¹⁰ See judgments of the Spanish Constitutional Court 141/1998 of 29 June and 292/2005 of 10 November.

explicitly underlining that the list of situations in which consular protection and assistance to EU citizens should be granted is not exhaustive. Therefore, Member States may broaden the scope of protection and assistance, something that – in light of the text of the Circular Order - Spain seems willing to do. The Circular Order at issue also contains some indications on how to provide consular protection and assistance to EU citizens other than Spanish nationals.

2.4. National law

Unlike others Constitutions, such as the Portuguese one, **the Spanish Constitution does not include a particular provision on consular protection.**

Nevertheless, Article 42 of the Spanish Constitution refers to the protection guaranteed by the State to economic and social rights of Spanish workers abroad. Also, other constitutional provisions concerning, equality rights and dignity in general, are considered to be applicable in the framework of consular protection.¹¹

Consular protection is considered as **an activity of the foreign administration of the Spanish State.** In this regard, Law 6/1997 of 14 April¹ on the organization and functioning of the general administration of the State, considers **consular offices as organs of the Spanish administration abroad** (see Article 36).

Before outlining the internal legislation on consular protection, it should be underlined that, in light of the incardination of consular offices as organs of the Spanish administration, **consular functions have to be exercised in accordance with the legislation regulating the activities of the administration, including, *inter alia*, Law 30/1992 of November 26, of the legal regime for public administrations and the common administrative procedure.**

Regrettably, **there is not a comprehensive law on consular protection and assistance in Spain**, as it is the case in Germany, Finland or Estonia. Rather, consular protection and assistance is regulated in various regulations, ministerials orders and circular orders.¹² The most relevant are outlined herebelow.

- Article 24 of the Regulation of the consular career, which dates back to 27 April 1900, remains in force. According to this provision, civil servants carrying out consular functions are obliged to provide protection and assistance to Spanish people located in their district.
- Royal Decree 896/2003, 11 July, regulates the issuance of ordinary passports and their characteristics.
- Law 40/2006, 14 december, regulates the Statue of the Spanish citizenship abroad.
- **Ministerial Order AEX/1059/2002, 25 April, contains the basis for the granting of consular protection and assistance aid abroad.** This is the fundamental text from which the legal practice on consular aid is derived. This provision has been modified by **Ministerial Order AEC/3119/2005, 26**

¹¹ See J. Núñez Hernández, *La Función Consular en el Derecho Español*, Ministerio de Asuntos Exteriores, Madrid, second ed., 2004, at 316-317. A new edition of this book – a Ph.D. thesis defended by a member of the Spanish diplomacy, who has been in charge of various Consular Offices and who has also been Director General for Consular Affairs at the Spanish Ministry of Foreign Affairs - has been recently published under the following title: J. Núñez Hernández and X. Martí Martí, *La Función Consular en el Derecho Español*, Ministerio de Asuntos Exteriores, Madrid, third ed., 2009.

¹² J. Núñez Hernández and X. Martí Martí, *La Función Consular en el Derecho Español*, Ministerio de Asuntos Exteriores, Madrid, third ed., 2009, page 310.

September, in relation to the amount of periodic aid to Spanish detainees in prisons abroad.

- Circular order 3.251, 30 May, regulates the transport of corps to Spain.
- Circular order 3.252, 15 July, regulates the assistance to Spanish detainees abroad.
- Finally, Ministerial Order 1.186/2006, 4 April, regulates and calls for economic aid to institutions that provide assistance to Spanish in need abroad.

As regards the case law, there is no case law on point related to the rules on consular protection. Courts have dealt with cases on visas and asylum, and also, exceptionally, with diplomatic and consular immunities (including, *inter alia*, the specific tax regime or the protection of diplomatic and consular property)¹³. In some cases, Courts have faced claims addressed, for instance, to “*re-establish civil and social rights as recognised in the Treaty of Peace and Friendship as well as in the Treaty on Double Nationality between Spain and Chile, signed of 1958*”. Yet, these cases are, again, related to visas and working permits in Spain. The plaintiff asked the Spanish Government to develop this particular point of the Treaty and the Court argued that such a right does not exist and, therefore, Courts cannot ask Governments to rule on a specific point left open by a Treaty [see decision of the Supreme Court, Chamber for Judicial Review, of 8 May 2009].

As a consequence, no substantial judicial doctrine on consular protection and assistance is to be found. Some exploratory arguments could explain this (lack of information on the Spanish judicial system for people living abroad; lack of economic means, for instance), but it is hard to provide a definite legal explanation for this.

2.5. Documentation of consular protection

As above referred, **there is no comprehensive law on consular protection and assistance in Spain. Therefore, documentation on consular protection and assistance has to be retrieved from dispersed sources.**

That having said, there is an **electronic compilation of the so-called “Órdenes Circulares” (Circular Orders), which are instruments of soft law** addressed by the Subsecretary of the Ministry of Foreign Affairs and Cooperation, in the name of the Minister, to the heads of Diplomatic Missions and Consular Offices. The compilation refers to all areas covered by the Ministry, thus not only to consular law. A selection of the most relevant Circulars for the purposes of this research has been done, and the information has been included in Section 9. 27 Circular Orders have been selected. They cover a wide range of issues, such as the ceremony conducted at consular offices to marry Spaniards (including, for instance, the “requirement” of addressing some greeting words to the spouses once the legal part has concluded) or the establishment of an emergency phone number at Diplomatic Missions and Consular Offices. **It should be underlined that there is a specific Circular Order (n. 3213 of 29 February 1996) including guidelines on the protection of EU nationals in third countries where their country does not have diplomatic or consular representation.**

Further, important information may be retrieved from the **norm ruling the internal organisation of the Ministry of Foreign Affairs and Cooperation**, as the competences of each authority dependent of that Ministry are specified therein.¹⁴

¹³ For instance, the recent decision of the Supreme Court (Chamber for Social Affairs) of 22 June 2009.

¹⁴ See Real Decreto 1124/2008, de 4 de julio, *por el que se desarrolla la estructura orgánica básica del Ministerio de Asuntos Exteriores y Cooperación*.

Finally, a service in the Ministry of Foreign Affairs is in charge of the the drafting and ratification of consular agreements. This service also monitors whether the different agreements are still in force. This service is called *Servicio de Convenios Consulares*: [Service of Consular Agreements] It may provide important and up-to-date information on Spanish consular services.

2.6. Information to citizens on consular protection

Official information to citizens on consular protection and assistance can be found at the the Spanish Ministry of Foreign Affairs and Cooperation.

Information on consular services can also be found at the website of the Ministry of Foreign Affairs and Cooperation¹⁵, in periodic publications of the Ministry at issue, such as the ‘Guide of representations of Spain abroad’, annually published, as well as in the websites of the main consulates (see, for example, the consulate of Spain in Boston¹⁶).

The website of Spanish Ministry of Foreign Affairs and Cooperation includes a section on general information about the mission of the Spanish consular network and about the services that the consular posts can do:

- issue passports,
- provide information about educational, medical or legal services of the country where the consulate is located,
- provide assistance to detainees,
- in exceptional circumstances, advance money for repatriation that will have to be reimbursed to the Treasury,
- provide Civil Registry, and notary services, legalizace documents, and forward communications and petitions to Spanish organs¹⁷.

The website also give some examples of the kind of services that the “consulates” **cannot** do:

- Act as travel agencies
- Provide a job abroad
- Guarantee a treatment in a hospital or jail better than the one usually provided in the country at stake
- Act as a guarantor for a credit or debt, lend money or pay fines
- Provide personnel to act as interpret, guide or social assistant.

The website includes a section on information for Spanish citizens abroad on a temporary basis. In this section travel recommendations, and a template for registration in a Spanish consulate may be retrieved.

Finally, the Information for Spanish citizens who are residents abroad includes the reminder that registration in the relevant consulate is compulsory as well as some recommendations for the particular situation of the Spanish citizens residing abroad¹⁸.

¹⁵ <http://www.maec.es/>

¹⁶ http://www.maec.es/subwebs/Consulados/Boston/es/MenuPpal/ServiciosConsulares/Paginas/posting_TSW.aspx

¹⁷ Detailed information on each of the services that can be provided by the Spanish consulates may also be found in the right hand side of the following website:

<http://www.maec.es/es/MenuPpal/Consulares/ServiciosConsulares/Paginas/HacerConsuladoPorUsted.asp>

¹⁸ The information can be visited online in the following link:

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

Spanish bilateral agreements with third countries do not include provisions protecting Union citizens working and living in third countries.

As to information to third countries of the practice of extending protection to Union citizens (Art 8 Vienna Convention on Consular Protection), it seems that this is done on an *ad hoc* basis without general and prior information.

Spanish bilateral agreements with third countries do not include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State. In fact, the extension of the protection to family members should be understood in a narrow sense.

In general, Spain does not extend consular protection to Union citizens' family members who are not nationals of a Member State. Exceptions might exist in case of evacuations. Until now, Spain does not seem to have informed third countries of this practice.

Spain has not started negotiations concerning agreements with third countries including provisions protecting Union citizens working and living in third countries.

Spain has not started negotiations concerning agreements with third countries to include provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

3.2. Statistical data on consular practice

According to the interviews held with the personnel of the Ministry of Foreign Affairs and Cooperation, Spain offers extensive consular services to its citizens. **There is, however, no official database containing these figures.**

Notwithstanding the above, some (scarce) data could be recollected, thanks to the assistance of the Ministry's personnel. **These data concern aid conferred by consular offices in 2008 according to the various aid schemes provided in the Spanish legislation, which are dealt with under Section 4:**

- 97 subsidies were granted by Spanish consular offices to institutions providing assistance to *Spaniards* in situation of need in other countries. The total amount for this was 1.020.000 euros.
- 14.246 individual subsidies were granted: 7.581 subsistence aid subsidies (total amount: 1.484.624 Euro), 6.462 extraordinary aid subsidies (total amount: 1.671.724 Euro) and 203 repatriations (total amount: 124.274 Euro).
- 1.998 arrested persons were assisted.

Countries where more substantial aid was granted are (following a decreasing order according to the amount received): Cuba, Morocco, Argentina, Uruguay, Brazil and Venezuela.

Further, central services of the Ministry of Foreign Affairs and Cooperation granted aid directly (total amount: 375.727).

The total amount of economic aid to *Spanish nationals* in situation of need was 4.676.349 Euro.

4. Consular protection in detail

Spain counts today with a considerably large consular network. Spain has 118 resident Embassies, 92 of them with a consular section, plus another 73 under the regime of multiple accreditation (*regimen de acreditación multiple*), 91 General Consulates, and four Consulates. Together with the above, there are circa 375 honorary consulate offices.¹⁹

Honorary consulates were foreseen in Article 22 of Royal Decree 632/1987 in line with the provisions of the Vienna Convention of 1963 on consular relations. Their functions are regulated by Royal Decree 1390/2007, 29 October, that approved the regulation of Honorary Consular Agents of Spain abroad. The Honorary consulate offices are dependent of the Consulate office located in their demarcation. In those countries where there is no Consulate office, they are dependent of the Diplomatic Mission, either resident or of multiple accreditation.²⁰

The budget reserved for consular protection and assistance is qualified as high by the officials in charge of the programmes. In 2009, out of 599.961.150 Euro for External Action [chapter 142A of the Government Budget], 5.040.470 Euro were granted under chapter 493 [i.e., protection of *Spanish nationals* abroad: social assistance, evacuations, hospitalizations and repatriations]. This amount is similar to the amount corresponding to 2008: out of 589.863.700 euros for External Action, 4.690.470 Euro were granted under chapter 493.²¹

According to the information provided by officials from the Ministry of Foreign Affairs and Cooperation, Directorate General for consular affairs and assistance, Spain has already been **Lead State** (*“Estado de Referencia”*) and may consider being it again in the future. The same sources confirm that Spain has not, to date, entered into co-location agreements with other Member States of the European Union, although Spain may do it in the future.

4.1. Right to consular (and diplomatic) protection

In Spain there is no *subjective* right to receive consular (and diplomatic) protection, hence, there is no *subjective* right to receive an economic aid abroad.

Although there are some general guidelines for this, **administrative decisions in this area are discretionary** (by “discretionary” it is intended to refer to its strict meaning, i.e., decisions taken in a *legal* framework of freedom).

In this regard, and given that consular offices are considered organs of the Spanish administration abroad, and that their activity is subject to Law 30/1992 of November 26, on the legal regime for public administrations and the common administrative procedure, **the right of appeal provided for by the abovementioned Law should also be available against acts pertaining to consular protection and assistance. Similarly, it should be possible to challenge consular decisions before the administrative courts pursuant to Law 29/1998, regulating the administrative jurisdiction.**

¹⁹ This information has been extracted from the work of J. Núñez Hernández and X. Martí Martí, *La Función Consular en el Derecho Español*, Ministerio de Asuntos Exteriores, Madrid, third ed., 2009, see page 321 and footnotes 52-54.

²⁰ See J. Núñez Hernández and X. Martí Martí, *La Función Consular en el Derecho Español*, Ministerio de Asuntos Exteriores, Madrid, third ed., 2009, see pages 308-309

²¹ These and other figures can be found in the website of the Spanish Treasure: <http://www.sgpg.pap.meh.es>.

Following the Vienna Convention on consular relations, Spanish nationality is a pre-requisite for consular protection and assistance, even though Community Law wants all Union citizens to receive equal protection in third countries where some Member States might not have diplomatic and/or consular representation.²²

No specific mention is made in the legal and soft law documents to citizens of the EU other than Spanish nationals, and usually family members who are not Spanish nationals are covered by this protection.

This type of protection is not extended to other categories, such as recognized refugees, stateless persons or persons with resident permits.

Consular protection is considered to justify the very existence of Spanish consular offices, as they were created to protect merchants in the Mediterranean area.²³ It is interesting to note here that, historically, Spanish consular protection has in some cases also included non-nationals.²⁴ This occurred since the XVI century, a time in which merchants conducted their affairs in Muslim countries and they had to be protected through specific legal instruments (*capitulaciones*) from some aspects of the Coranic rules. The protection system was here extended to groups other than the Spanish merchants, such as Jews working for those merchants. The particularity of consular protection at that time was that it included jurisdictional powers, something which contributed to discredit the institution. Consequently, the renaissance of consular protection in the XVIII century, due to the fostering of bilateral treaties, did not include this type of jurisdictional protection.

Protection is now understood in a different way, according indeed to customary consular law included in Art. 5e) of the Vienna Convention on Consular Relations. This Article should be complemented with Articles 36 and 38 of the same Convention, where both protection and assistance are included.

Protection and assistance are sometimes used as interchangeable concepts.²⁵

Yet “**protection**” arises when some intervention from consular authorities before local authorities of the receiving State is required. This can happen as a consequence of an illicit act of national authorities, such as the infringement of an international Treaty, and it is indeed the very essence of the consular functions as they have been understood along history.

“**Assistance**” occurs whenever a Spanish citizen has suffered any type of adversity. Here, specific categories receive specific attention, such as detainees, the elderly, orphans, battered women and those living abroad with the necessary subsistence means.²⁶ As this type of consular functions related usually to economic aid they are more recent in time, since they respond to formulas typical of the Welfare State.

It is further important to distinguish between diplomatic and consular protection, the former being a political means of disapproval, and the latter being an “administrative” way of cooperation with local authorities. Of course, both can coincide in certain cases, thus leaving the consular post an implementing role of the measures adopted by the diplomatic mission.

²² See on this J. Núñez Hernández, *op cit*, including fn. 57.

²³ *Idem*, at 310 ff.

²⁴ For the sake of discourse clarity, expressions such as “Spain”, “Spanish” or “nationals” are used here, even though they are not historically correct, as at that time there was neither “Spain” strictly speaking but a reunion of Kingdoms, and there were nor “nationals”, as the modern concept of nation goes back, as it is well know, to the XIXth century.

²⁵ Indeed, it has been argued that consular protection is usually linked to assistance. See J. Núñez Hernández, quoted, at 313-314.

²⁶ See J. Núñez Hernández, quoted, at 320-321.

There are different types of protection and assistance. As far as economic assistance is concerned, the various categories – which will be explained *infra* – are granted by the General Sub-director for Social Affairs at the General Direction of Consular Affairs and Assistance.

4.1.1. General framework of aid for consular protection and assistance

In Spain, there is a general legal basis for aid granted in the framework of consular protection and assistance, which is provided by the Order of the Minister of Foreign Affairs issued on 25 April 2002 [*Orden AEX/1059/2002, de 25 de abril, de bases reguladoras de las ayudas de protección y asistencia consulares en el extranjero*]. This should be understood in the framework of Article 5 of the Vienna Convention on Consular Relations (which is expressly mentioned by the Order) and also of the Regulation on the basic structure of the Ministry of Foreign Affairs and Cooperation and the General Statute governing Public Aid in Spain [*Ley 38/2003, de 17 de noviembre, General de Subvenciones*]. A call for aid is published on a yearly basis and the criteria do not vary significantly.²⁷ An amount of 2.000.000 euros, approximately, is granted overall every year.

Aid is granted by the Director General for Consular Affairs and Protection of Spaniards abroad, if the amount exceeds 30.000 Euro; by the General Sub-director for Social Affairs and the General Sub-director for the Protection of Spanish nationals abroad, if the amount is between 200 and 30.000 Euro, whereas it is directly for the Heads of Consular Posts or Heads of Mission at Spanish Embassies with Consular Section, in case the individual amount does not exceed 200 Euro. Under certain extraordinary circumstances, the Head of the post or mission can grant aids of a bigger amount.

Two big groups of aid are foreseen. On the one hand, aid is granted to institutions which assist Spaniards abroad, as it is the case with old people's homes. For many people this aid is the only subsistence means they dispose of and they are otherwise condemned to a situation of indigence. For this purpose, Consular Posts prepare reports on the activities of the institutions that operate in their jurisdiction.

Aid is always reimbursable, three exceptions are foreseen: subsistence aid, aid for detainees and aid for burial and cremation. It should be noted, though, that reimbursement is scarce in practice. A worth mentioning exception are religious congregations, that sometimes pay the reimbursement if one of their members has benefited from an aid.

A long list of aid is provided: repatriation, evacuation, subsistence, extraordinary or emergency aid, aid for detainees, aid for legal assistance. The list concludes with an open clause, whereby all aid similar in character to that mentioned, and considered adequate to meet the needs of each case can be accepted as eligible for the application of the Order. **Specific criteria rule the granting of each type of aid, but it should be recalled that this aid is granted through discretionary powers. Even though this kind of powers can also be subject to judicial review, no such a claim has succeeded so far.** Explanations for this might go beyond the purpose of this Report and they might be linked to the profile of the applicants, who might not be familiar with the Spanish review system and/or they might not have the economic means to profit from legal advice.

²⁷ See recent Order AEC/1191/2009, 28 April, on economic aids for institutions providing assistance to Spanish nationals in a situation of need abroad [*Orden AEC/1191/2009, de 28 de abril, por la que se establecen las bases reguladoras y se convocan ayudas económicas para instituciones asistenciales que prestan ayuda a españoles en situación de necesidad en el extranjero*].

Beneficiaries are Spanish nationals who meet the conditions listed in the Order. Nevertheless, Art. 7 of the Order includes a specific mention to the procedure to follow in cases where non nationals are to be protected due to different legal obligations. As for Union citizens, the Order refers directly to the agreements reached to this effect by the Member States. Also, as bilateral treaties are concerned, the Order refers to the contents of each Treaty.

Minors are granted a special treatment. In most cases no economic aid is provided, as other types of aid are preferred. This includes, for instance, books and other materials for school, which are provided directly by the consular staff.

Further it should be also noted that the general regime of allowances (including the retirement pension) and social benefits of the Ministry of Labour also applies for Spaniards living abroad who meet the general criteria of those benefits.

4.2. Assistance in cases of death

The abovementioned Order AEX/1059/2002 foresees the granting of aid for burial or cremation, in cases where the family or any other person or entity can not afford the expenses. **There is no aid for the corpse to be taken back to Spain or to a third State.**

4.2.1. Identifying and repatriating remains

No practice has been referred.

4.3. Assistance in cases of serious accident or serious illness

Spanish diplomatic or consular missions might **inform** next-of-kin, **arrange visits or give advice on reputable clinics and doctors.**

There is not a specific chapter under the Spanish consular aid scheme for serious accidents or illness. Notwithstanding this, it should be recalled that the aid list concluded with an open clause of “extraordinary aid”. This is the most common case faced by Consular Posts, and here serious accidents, serious illnesses and temporal incapacity are the major items. They refer both to residents and to tourists.

Several cases have been discussed in the public opinion recently.²⁸ For instance, the case of a Spanish woman who was sent to hospital in Turkey in July 2009 due to a nose hemorrhage and who reputedly did not receive consular assistance. In fact, as she disposed of private insurance, it was deemed not vital to provide her with public aid; several mountaineers have encountered death in the Himalayas and their families have sought for help in order to repatriate the corpse. In general, no aid is given for these purposes, as the cost is usually priceless; in July 2009 a Spaniard living in Gabon asked for economic help to return to Spain due to his having a terminal illness. No repatriation took place.

4.4. Assistance in cases of arrest or detention

This is one of the strongest policies of Spanish consular protection and assistance. There is specific legislation (hard and soft law) on this: Circular Order n. 3.252 on Spaniards arrested and imprisoned abroad, and the recent Order AEC/2292/2009, 3 August, establishing the legal bases of and announcing economic aid for the legal

²⁸ J. Núñez Hernández argues that once the press pinpoints a specific case, Ambassadors and Consuls have to take it into consideration. See at 315, fn. 116.

assistance of Spanish citizens who face condemnations of death penalty for 2009 [see Section 9]. It should be noted that this is an Order and not a Circular Order, a distinction that implies that the former is a type of regulation/by-law, i.e., hard law, issued by the Minister of Foreign Affairs and Cooperation. **A proof also of the importance of this area in the general context of Spanish consular protection and assistance is the high number of bilateral treaties that have been signed in this area** [see Section 9].

The Spanish diplomatic or consular missions will observe the respect of international law (treatment of foreigners) and domestic law. The general procedure starts with a report prepared by the Consul on the situation of the penitentiary situation in the country and, in particular, in the concerned institution. Visits are always paid, whenever possible, and detainees are therefore asked to sign up in order to verify this aspect. The needs of each detainee vary from country to country, due to the differences among the various legal and penitentiary systems, but also due to cultural differences. For instance, it was referred that the practice in certain countries (for instance, Morocco) is that families provide the detainee with food, thus implying that the national authorities do not provide it. Consular offices assume then this role.

There are around 2.000 Spanish nationals in this situation. Approximately 87% of the detainees are men and 13% are women.

Aid granted under this heading is voluminous (it is the biggest amount in the budget chapter related to consular protection), **and yet it is no possible to grant an exactly similar status to the one they could have received at Spanish prisons.** Spain grants approximately 100 euros per month to each detainee, something which is extraordinary in comparison to other countries. Nevertheless, it seems that some penitentiary institutions disagree with this behaviour.

Death penalty cases are clearly hard cases where consular protection plays an important role, but only in connection with more sophisticated political and diplomatic actions. The latter are even more complicated in decentralised or federal states in which death penalty depends upon State – and not federal - regulation. Detainees are usually better cared of if the Consul pays them a visit.

Consular protection in death penalty cases relates mainly to providing legal assistance, as far as no public defence exists. In some cases there is indeed such assistance, but only for the first instance and not for appeals.

As mentioned before, there is a new **Order, of 3 August 2009, establishing the legal bases and announcing economic aid for the legal assistance for Spanish citizens who face condemnations of death penalty for 2009. Only Spanish nationals can be direct beneficiaries of this type of aid** (see Art. 2 of the Order). As indirect beneficiaries qualify both physical persons and institutions, no matter the nationality, established in Spain or abroad, which provide legal assistance. The general legal regime of public aid, as in the General Statute on Public Aid (Statute 38/2003, 17 November), applies here.

4.5. Assistance to victims of violent crime

No specific practice was referred in this area.

Concerning battered women, a question to the Ministry of Equality was sent, wondering whether there was a specific policy on Spanish battered women living abroad. No answer has been received so far. Yet gender violence is now an important topic in Spanish governmental policies and it can be assumed that it might also play a role in consular protection and assistance.

4.6. Relief and repatriation of distressed citizens

In Spain there is a fear towards what could be called “consular tourism”, i.e., people travelling at the expenses of the public consular budget.

In any case, as far as repatriations are concerned, beneficiaries are given flight tickets and not direct economic aid.

In collective evacuations, where natural disasters, terrorist acts, military conflicts or other similar causes arise that justify such evacuations, no proof of individual need is required. And, on the other hand, citizens can not be forced to leave the country, as no coercive means can be used outside the Spanish borders. Two main problems arise here: first, the location of all nationals. And second, the protection of those who did not accept to be evacuated at first but who changed their minds as the situation turned worse, a moment in which the evacuation itself turns very difficult. This might lead at the end to militarised evacuations, which are riskier and more expensive, if they are possible at all. Cooperation among countries who wish to evacuate their nationals is usually required when this point is reached. Nevertheless, as it happens with other areas of consular protection, **there is no subjective right to be evacuated. There is also no public liability of the Spanish Government in evacuations where damages arise.**

Consular protection refers usually only to the affected individual and, in some cases, also to his or her next-of-kin. **Yet the seriousness of situations in which evacuations take place makes that here no strict criteria concerning the concept of “family” are applied. They are rather generously interpreted.**

In November 2008 several Spanish nationals were affected by political turbulences in Thailand. Even though this type of situation does not usually justify the granting of an aid, repatriation of those affected was conducted.

According to the information provided by officials from the Ministry of Foreign Affairs and Cooperation, Directorate General for consular affairs and assistance, Spain **has already provided assistance to (non-Spanish) citizens of the Union in the past and asked reimbursement** afterwards from their country of nationality.

4.6.1. Natural disasters

Spanish consular and diplomatic authorities immediately establish **close contacts with citizens** in order to provide support and, if required, organize **evacuations** as soon as possible.

4.6.2. Terrorist acts

In case of a terrorist attack, Spanish consular and diplomatic authorities **contact local authorities** in order to provide support to citizens if involved. Support to next-in-kin of possible victims is also given.

In case of rape, Spanish consular and diplomatic authorities intervene and negotiate, in co-operation with the local authorities, the release of Spanish citizens.

4.6.3. Pandemics

Spanish consular and diplomatic authorities **contact local authorities** in order to provide support to citizens if involved.

4.6.4. Military conflicts

Spanish consular and diplomatic authorities **contact local authorities** in order to provide support to citizens if involved. **Evacuations** are organized immediately if necessary.

4.6.5. Financial advances

Financial advances and repatriation to the home country will be provided only at utmost urgency.

Financial advances to EU citizens: So far, a standard practice has not been established. In general, consent of the other Member State is required for financial advances; e.g., a deposit or firm commitment for recovery of costs is obligatory, as regulated in EU law.

Spanish migrants are usually always given the (economic) opportunity to return, thus satisfying a constitutional requirement (Art. 42).

4.7. Consular fees

Consular fees in Spain were first regulated in the consular regulation of 1900. Subsequently, consular fees have been regulated by the Decree of 7 July 1949, replaced by Law 7/1987, 29 May, on consular fees. This law has been subsequently modified several times.²⁹ Law 7/1987 is interesting for the purposes of this Report because it outlines in a pedagogical fashion the different consular services provided by the Spanish Consular authorities.

4.8. Reimbursement of the assisting State

There is no regulation in Spain concerning reimbursement. Currently the situation is unclear.

4.9. Case studies, in particular problematic practices

Together with the cases reported in sections 4.3 and 4.6, a practice that has raised particular attention from the media has been the assistance to Spanish citizens sentenced to death or accused of crimes involving the death penalty abroad. This type of assistance has even led to the approval by the Spanish Parliament on November 30 2006 of a non-legislative proposal calling upon the Government to adopt the necessary policies and legislative measures to ensure proper and free legal assistance to Spanish citizens sentenced to death or accused of crimes involving the death penalty abroad. Also, as abovementioned, Circular Order n. 3.252 on Spaniards arrested and imprisoned abroad, and the recent Order AEC/2292/2009, 3 August, establishing the legal bases of and announcing economic aids for the legal assistance of Spanish citizens who face the death penalty for 2009.

The support provided by the Spanish authorities in these situations have included consular assistance. The following table, extracted from report prepared by the Association Against the Death Penalty "*Pablo Ibar*",³⁰ reflects the activities carried out by the Spanish authorities in relation to the Spanish citizens sentenced to death or accused of crimes involving the death penalty in the different countries of detention.

²⁹ See Law 37/1988, 28 December, Royal Decree 12/1995, 28 December, law 13/1996, 30 December, and Organic Law 8/2000.

³⁰ For the website of the Association see: <http://www.pabloibar.com/>. The report can be found at: <http://www.pabloibar.com/activos/pdf/ESTUDIO%20Pablo%20Ibar.pdf>

Case	Country	Action
Julio Mora	U.S.A.	Consular assistance
Jose Joaquín Martínez	U.S.A.	Consular assistance, Resolutions by State and regional parliaments. Raise of public and private funds by the family.
Pablo Ibar	U.S.A.	Consular assistance. Resolutions by State and regional parliaments. Senate delegation visit. Raise of public and private funds by the Association Against the Death Penalty "Pablo Ibar".
Nabil Manakli	Yemen	Consular assistance. Governmental contacts that led to an agreement for the extradition of persons convicted
Paco Larrañaga	Filipines	Consular assistance. Governmental contacts.

Following to the intervention of the Spanish authorities the sentence of Mr. Nabil Manakli was changed from death to fifteen years of imprisonment. Paco Larrañaga was sent by the Filipines to Spain to continue his imprisonment in the latter country. In those cases related to the U.S.A., according to the Association Pablo Ibar, this country has not respected the Vienna Convention on consular relations since the Spanish citizens, as allegedly other country nationals, have not been informed of their right to receive consular protection.

5. Emergency travel document (ETD)

All Spanish diplomatic missions and general consulates are equipped with ETDs.

Honorary consuls are not deemed competent to issue travel documents.

6. Relevant diplomatic protection

In Spain, no subjective right to consular (and diplomatic) protection exists.

Consular (and diplomatic) protection is provided for Spanish nationals, for EU-nationals, and also to nationals of other countries with which Spain has signed a Treaty. In general, consular (and diplomatic) protection is not extended to family members who are not nationals of a Member State.

7. Exercise of consular functions for expats

Spain has a large number of expats. Today, according to the figures provided by the Spanish Ministry of Foreign Affairs and Cooperation, more than 1.5 million Spanish nationals live permanently abroad, and more than 10 million Spanish citizens travel annually abroad for, *inter alia*, tourism, study, business, or NGO activities.

To serve this large community, Spain has an extensive consular network currently composed of circa 200 consular offices, and consular sections of embassies, together with circa 500 Honorary Consulates and Vice-Consulates.

The services provided by the Spanish consular network include the full range of traditional consular services: electoral services, civil registry (marriage, death, birth and nationality), notarial services, legalization of documents, assistance in case of arrest or detention, assistance in case of consular emergency, assistance in case of need (because of illness, theft, robbery, or any other unforeseen situation), identification and repatriation, issuance of documentation such as passports and Emergency travel

documents, assistance for international adoption within the framework of The Hague Convention on Intercountry Adoption.

8. Summary

Spain is a party to the most important multilateral international treaties on consular relations. Spain has concluded many bilateral treaties and maintains informal arrangements with many nations. Further cooperation is based on common cultural background (based on the special relations to Latin America and Northern Africa) but also on diplomatic and consular networks.

Assistance to EU citizens is provided according to Article 23 TFEU. So far, there is a limited practice in this regard. For evacuation actions in international conflicts, the *ad hoc* cooperation between EU Member States has proven to be very helpful.

The legal framework has not been extended by bilateral arrangements to cover the delegation of consular or diplomatic protection according to Article 23 TFEU or support for family members who are not nationals of a Member State.

9. List of important documents

International treaties and related national instruments

General context and content

1.

Title: Convención de Viena sobre relaciones consulares, de 24 de abril de 1963

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) n. 56, 06 March 1970)

Entry into force: Spain acceded this Convention by Instrument deposited at the Secretary General of the UN on 13.02.1970. It entered into force on 05.03.1970

English title: Vienna Convention on Consular Relations, Vienna, 24 April 1963

2.

Title: Convención de Viena sobre relaciones consulares – Protocolo de Firma Facultativa sobre jurisdicción obligatoria para la solución de controversias, de 24 de abril de 1963

Entry into force: Never ratified by Spain

English title: Vienna Convention on Consular Relations - Optional Protocol on the Compulsory Settlement of Disputes, Vienna, 24 April 1963

3.

Title: Convención de Viena sobre relaciones consulares – Protocolo de Firma Facultativa sobre Adquisición de la Nacionalidad, de 24 de abril de 1963

Entry into force: Never ratified by Spain

English title: Vienna Convention on Consular Relations – Optional Protocol on Consular Relations concerning Acquisition of Nationality, Vienna, 24 April 1963

4.

Title: Convención sobre las Misiones Especiales y Protocolo Facultativo sobre la solución obligatoria de Controversias, hechos en Nueva York el 8 de diciembre de 1969

Publication reference: BOE (Boletín Oficial del Estado/Official Journal), 4 July 2001, n. 159, p. 23715, Erratum on BOE n. 233, 28 September 2001, p. 36014, Various Exchanges of Diplomatic Notes on the application of the Convention, published on the Official Journal

Entry into force: In force in Spain since 30 June 2001 - Instrument of ratification on 28 May 2001

English title: Convention on Special Missions – Optional Protocol on the Compulsory Settlement of Disputes

5.

Title: Convenio Europeo de Funciones Consulares, hecho en París, el 11 de diciembre de 1967 [European Treaty Series/ETS 61]

Publication reference: Instrument of ratification not found

Entry into force: Signed by Spain on 15 October 1982 and ratified on 16 July 1987 [only four countries have ratified while five ratifications are required for its entry into force]

English title: European Convention on Consular Functions, Paris, 11 December 1967

6.

Title: Convenio Europeo relativo a la supresión de la legalización de documentos extendidos por Agentes diplomáticos o consulares, hecha en Londres el 7 de junio de 1968 [European Treaty Series/ETS 63]

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) n. 206, p. 23242, 28 August 1982

Entry into force: Signed by Spain on 15 April 1982 and ratified on 10 June 1982. It entered into force in Spain on 11 September 1982

English title: European Convention on the Abolition of Legalisation of Documents executed by Diplomatic agents or Consular Officers

7.

Title: Convenio Europeo de Inmunidad de los Estados, hecho en Basilea el 16 May 1972 [European Treaty Series/ETS 74]

Entry into force: Never signed by Spain

English title: European Convention on State Immunity

8.

Title: Acuerdo del Consejo de Europa de 26 de octubre de 1976 sobre Traslado de Cadáveres, hecho en Estrasburgo el 26 de octubre de 1976 [European Treaty Series/ETS 080]

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) n. 115, p. 16157, 13 May 1992

Entry into force: In force in Spain since 19 April 1992 - Instrument of Ratification on 5.2.1992

English title: European Agreement on the Transfer of Corpses [ETS 080], done in Strasbourg on 26 October 1973

9.

Title: Convenio del Consejo de Europa sobre el Traslado de Personas Condenadas, Estrasburgo, 21 de marzo de 1983

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) n. 138, p. 17478, 10 June 85

Entry into force: In force since 1 July 1985 - Instrument of Ratification on 18.02.85; Declaration on Art. 3.3 entered into force on 21 October 1994, BOE (Boletín Oficial del Estado/Official Journal) n. 65, 17 March 1995, p. 8520

English title: Convention on the Transfer of Sentenced Persons, Strasbourg, 21 March 1983

Summary: This Convention is included here, as this is the area where Spanish consular activity is more intense. Spain is reputedly the country that has signed the highest number of bilateral treaties on transfer and assistance of sentenced persons. The Instrument of Ratification includes declarations to arts. 3.3, 3.4, 16.7 and 17.3. Declaration to Art. 3.4 defines what should be considered a “State national” to the effect of the Convention. Only the definition of a national according to the Spanish Civil Code applies

[Bilateral Consular Treaties³¹](#)

10.

Title: Convenio Consular entre España y la Confederación de Alemania del Norte, firmado el 22 de febrero de 1870

Publication reference: Gaceta de Madrid (Official Journal until the name was replaced by “Boletín Oficial del Estado”) 3 May 1870, n. 128. Extended to the whole German Empire by Agreement of 12 January 1872, published in the Gaceta de Madrid 4 June 1872

Entry into force: In force since 22 April 1870, still in force

English title: Consular Treaty between Spain and the North German Confederation, signed on 22 February 1870

Summary: Standard consular bilateral Treaty addressing various questions on consular relations

11.

³¹ Listed in alphabetical order following the countries’ names in Spanish

Title: Canje de Notas con Alemania sobre Restablecimiento de Relaciones Consulares, hecho el 10 de mayo de 1948

Entry into force: In force since 10 May 1948

English title: Exchange of Diplomatic Notes with Germany on the Reestablishment of Consular Relations, 10 May 1948

12.

Title: Convenio entre el Reino de España y el Gobierno de Australia de trabajo remunerado para familiares dependientes del personal diplomático, consular, administrativo y técnico de Misiones Diplomáticas y Oficinas Consulares, hecho en Madrid el 6 de marzo de 2000

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 13 June 2001, n. 141, p. 20818

Entry into force: In force since 27 April 2001

English title: Agreement on Employment of the Spouses and Dependants of Diplomatic and Consular Personnel between the Kingdom of Spain and the Australian Government, done in Madrid on 6 March 2000

Summary: This Agreement is included as an example of a long list of Agreements of this type, where family dependants of people working at Diplomatic Missions and Consular Offices are granted some rights to work in the recipient country. In these Agreements no mention is done to other Community nationals

13.

Title: Canje de Notas con Bulgaria sobre Restablecimiento de Representaciones Consulares y Comerciales, firmado el 4 de junio de 1970

Publication reference: Not published

Entry into force: In force since 4 June 1970, still in force

English title: Exchange of Diplomatic Notes with Bulgaria on the Reestablishment of Consular and Commercial Representations, signed on 4 June 1970

14.

Title: Tratado consular entre España y El Salvador, firmado el 6 de Noviembre de 1953

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 5 August 1954, n. 217, p. 5418;

Entry into force: Ratified by Instrument on 12 March 1954, still in force

English title: Consular Treaty between Spain and El Salvador, signed on 6 November 1953

Summary: No specific mention to third country nationals is made

15.

Title: Canje de Notas con Fidji poniendo en vigor entre ambos países el Convenio Consular Hispano-Británico de 30 de mayo de 1961, hecho el 16 de octubre y el 18 de diciembre de 1972

Publication reference: Not published

Entry into force: Done on 16 October and 18 December 1972

English title: Exchange of Diplomatic Notes with Fiji, bringing into force between both countries the Spanish-British Consular Treaty of 30 May 1961, done on 16 October and 18 December 1972

16.

Title: Tratado sobre derechos civiles y atribuciones consulares entre el Estado español y la República de Filipinas, firmado el 20 de mayo de 1948

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 26 April 1950, n. 116, p. 1813

Entry into force: Ratified by Government Decree of 11 November 1948, still in force

English title: Treaty on civil rights and consular functions between the Spanish State and the Republic of the Philippines, signed on 20 May 1948

Summary: No specific mention to third country nationals is made

17.

Title: Tratado General de Amistad y Cooperación entre el Reino de España y la República de Filipinas, hecho en Manila el 30 de junio de 2000

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 14 June 2001, n. 142, p. 20962

Entry into force: In force since 30 April 2001

English title: General Treaty of Friendship and Cooperation between the Kingdom of Spain and the Republic of the Philippines, done in Manila on 30 June 2000

Summary: Arts. 10 and 11 refer to consular cooperation on criminal, civil and business issues. It does not include any reference to Community citizens

18.

Title: Tratado sobre asistencia judicial en materia penal entre el Reino de España y la República de Filipinas, hecho en Manila el 2 de marzo de 2004

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 26 March 2009, n. 73, p. 29143

Entry into force: In force since 18 December 2008

English title: Treaty on judicial assistance in criminal matters between the Kingdom of Spain and the Republic of the Philippines, done in Manila on 2 March 2004

Summary: It deals with practical issues concerning judicial assistance in criminal matters, as there has been an important case for the Spanish public opinion in the last years [it concerned a Spanish national condemned to death penalty]

19.

Title: Convenio Consular entre España y la República de Guinea Ecuatorial, firmado en Santa Isabel de Fernando Poo el 24 de julio de 1971

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 23 December 1971, n. 306, p. 20799

Entry into force: In force since 24 July 1971, still in force

English title: Consular Treaty between Spain and the Republic of Equatorial Guinea, signed in Santa Isabel de Fernando Poo on 24 July 1971

Summary: It is a classical and short Treaty concerning the consular functions. No mention to third country nationals is made

20.

Title: Tratado de 23 de octubre de 1980 de amistad y cooperación entre el Reino de España y la República de Guinea Ecuatorial, Hecha en Madrid y Dos Cartas Anejas

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 27 July 1981, n. 178, p. 17072. Protocols and Complementary Agreements published on BOE (Boletín Oficial del Estado/Official Journal) n. 98, 24 April 1982, p. 10434.

Entry into force: Provisional application since 23 October 1980. In force since 13 July 1981

English title: Treaty of 23 October 1980 on Friendship and Cooperation between the Kingdom of Spain and the Republic of Equatorial Guinea, done in Madrid. Two annexed Letters.

Summary: It makes reference to a Consular Treaty from 12 October 1969, which was subject to revision at that time. This Treaty maintains the validity of the Consular Treaty on a provisional basis, as long as the new Treaty is not negotiated. It is also a classical and basic Treaty with no reference to third country nationals.

21.

Title: Convenio Consular entre España y la República Popular de Hungría, firmado el 24 de Febrero de 1982

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 3 August 1984, n. 185, p. 22650.

Entry into force: Ratified by Instrument on 21 May 1984, in force since 8 August 1984, still in force

English title: Consular Treaty between Spain and the Popular Republic of Hungary, signed on 24 February 1982.

Summary: Classical and basic Treaty on consular functions, organisation of consular offices and similar issues, with no reference to third country nationals

22.

Title: Convenio Consular entre España y el Reino Unido de Gran Bretaña e Irlanda del Norte, firmado el 30 de mayo de 1961

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 27 April 1963, n. 101, p. 6994

Entry into force: In force since 11 April 1963, still in force save Art. 43 (as of 20 January 1987)

English title: Consular Treaty between Spain and the United Kingdom of Great Britain and Northern Ireland, signed on 30 May 1961

Summary: It incorporates a clause on territorial application, including Gibraltar

23.

Title: Primer Protocolo de Firma con el Reino Unido que Regula las Relaciones Consulares en caso de guerra o ruptura de relaciones diplomáticas, firmado el 30 de mayo de 1961

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 27 April 1963

Entry into force: In force since 11 April 1963, still in force

English title: First Signature Protocol with the United Kingdom regulating consular relations in case of war or breaking up of diplomatic relations, signed on 30 May 1961

24.

Title: Segundo Protocolo con el Reino Unido donde se prevén ciertas restricciones territoriales a la aplicación del convenio consular, firmado el 30 de mayo de 1961

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 27 April 1963

Entry into force: In force since 11 April 1963, still in force

English title: Second Protocol with the United Kingdom where certain territorial restrictions are foreseen, as far as the Consular Treaty signed on 30 May 1961 is concerned

25.

Title: Canje de Notas sobre Relaciones Consulares entre España y el Reino Unido, firmado el 8 de abril de 1963

Publication reference: Not published

Entry into force: In force since 8 April 1963, still in force

English title: Exchange of Diplomatic Notes between Spain and the United Kingdom, signed on 8 April 1963

26.

Title: Canje de Notas relativo al párrafo 2 del artículo 47 del Convenio Consular de 30 de mayo de 1961, hecho el 20 de octubre de 1973 y 31 de marzo de 1978

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 6 May 1978, n. 108, p. 10681

Entry into force: In force since 31 March 1978, still in force

English title: Exchange of Diplomatic Notes between Spain and the United Kingdom related to the application of Art. 47 paragraph 2 of the Consular Treaty of 30 May 1961

Summary: It refers to the entry into force of the clause concerning the territorial application of the Consular Treaty

27.

Title: Canje de Notas por el que cesa en sus efectos el Art. 46 del Convenio Consular de 30 de mayo de 1961, firmado el 2 de abril de 1982

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 25 May 1982, n. 124, p. 13629. Erratum published on BOE (Boletín Oficial del Estado/Official Journal) 23 July 1982

Entry into force: In force since 2 April 1982, still in force

English title: Exchange of Diplomatic Notes between Spain and the United Kingdom by which Art. 46 of the Consular Treaty of 30 May 1961, signed on 2 April 1982, is no longer in force

Summary: Art. 46 of the Consular Treaty deals with desertion in vessels of the mandatory State in the territory of the recipient State

28.

Title: Canje de Notas con Rumanía regulando entre España y Rumanía las relaciones consulares de navegación y establecimiento, firmado el 31 de marzo de 1934

Publication reference: Gaceta de Madrid, n. 229, 17 August 1934,

Entry into force: In force since 31 March 1934, still in force

English title: Exchange of Diplomatic Notes between Spain and Rumania, regulating the consular relations of navigation and establishment, signed on 31 March 1934

Summary: Agreement to be submitted to the most favoured nation clause, until a new Treaty is signed

*Bilateral treaties on sentenced persons*³²

(All these Treaties and Conventions include clauses on consular protection to citizens. They refer only to nationals and non to citizens of other Member States of the European Union)

29.

Title: Convenio de traslado de personas condenadas a penas privativas de libertad entre el Reino de Arabia Saudí y el Reino de España, hecho ad referendum en Jeddah el 27 de mayo de 2008

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 15 July 2009. n. 170, p. 59098

Entry into force: In force since 23 July 2009

English title: Treaty on the transfer of persons condemned to loss of freedom between the Kingdom of Saudi Arabia and the Kingdom of Spain, done *ad referendum* in Jeddah on 27 March 2008

30.

Title: Tratado sobre traslado de personas condenadas entre España y Argentina, firmado en Buenos Aires el 29 de octubre de 1987

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) nº 127, 27 May 1992. Corrección de errores B.O.E. de 12 de junio de 1992

Entry into force: In force since 30 June 1992

English title: Treaty on the transfer of condemned persons between Spain and Argentina, signed in Buenos Aires on 29 October 1987

31.

Title: Tratado entre España y Bolivia sobre transferencia de personas condenadas, firmado en Madrid el 24 de abril de 1990

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 30 May 1995, n. 128, p. 15674

Entry into force: In force since 27 May 1995

English title: Treaty between Spain and Bolivia on the transfer of sentenced persons, signed in Madrid on 24 April 1990

32.

Title: Tratado sobre traslado de presos entre el Reino de España y la República Federativa de Brasil, firmado en Brasilia el 7 de noviembre de 1996.

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) nº 84, de 8 de abril de 1998, p. 11832

Entry into force: In force since 22 April 1998

English title: Treaty on the transfer of prisoners between the Kingdom of Spain and the Federative Republic of Brazil, signed in Brasilia on 7 November 1996

33.

Title: Convenio sobre traslado de personas condenadas entre el Reino de España y la República de Cabo Verde, hecho "ad referendum" en Madrid el 20 de marzo de 2007

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 16 September 2009, n. 224, p. 77245,

Entry into force: In force since 1 August 2008

English title: Treaty on the transfer of sentenced persons between the Kingdom of Spain and Republic of Cape Verde, done *ad referendum* in Madrid on 20 March 2007

34.

Title: Convenio sobre traslado de personas condenadas entre la República Popular de China y el Reino de España, hecho en Madrid el 14 de noviembre de 2005

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 29 March 2007, n. 76, p. 13611

Entry into force: In force since 4 April 2005

English title: Treaty on the transfer of sentenced persons between the People's Republic of China and the Kingdom of Spain, done in Madrid on 14 November 2005

35.

³² Some of these States are also part or have adhered to the European Convention on Sentenced Persons.

Title: Tratado sobre personas condenadas entre el Reino de España y la República de Colombia, hecho “ad referendum” en Madrid el 28 de abril de 1993, y Canje de Notas del 2 y 3 de febrero de 1998 relativo al apartado 3 del artículo 3 de aquél

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 7 May 1998, n. 109, p. 15160

Entry into force: In force since 10 April 1998

English title: Treaty on sentenced persons between the Kingdom of Spain and the Republic of Colombia, done *ad referendum* in Madrid on 28 April 1993, and Note Exchange of 2 and 3 February 1998 related to Art. 3, section 3, of the former

36.

Title: Tratado sobre traslado de personas condenadas entre el Reino de España y la República de Costa Rica, hecho en Madrid el 23 de octubre de 1997

Publication reference: BOE (Boletín Oficial del Estado/Official Journal), 7 November 2000, n. 267, p. 38566

Entry into force: In force since 1 October 1998

English title: Treaty on the transfer of sentenced persons between the Kingdom of Spain and the Republic of Costa Rica, done in Madrid on 23 October 1997

37.

Title: Convenio entre el Reino de España y la República de Cuba sobre ejecución de sentencias penales, firmado "ad referendum" en Madrid el 23 de julio de 1998

Publication reference: Provisional application: BOE (Boletín Oficial del Estado/Official Journal) n° 267, de 7 de noviembre de 1998, p. 36387; Erratum BOE (Boletín Oficial del Estado/Official Journal) n° 288, de 2 de diciembre de 1998, p. 39529; Final publication: BOE (Boletín Oficial del Estado/Official Journal) n° 240, de 6 de octubre de 2000

Entry into force: Provisional application since 26 September 1998. In force since 16 June 2000

English title: Treaty between the Kingdom of Spain and the Republic of Cuba on the enforcement of criminal judgments, signed *ad referendum* in Madrid on 23 July 1998

38.

Title: Convenio entre el Reino de España y la República del Ecuador para el cumplimiento de condenas penales, firmado en Quito el 25 de agosto de 1995

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) n° 72, de 25 de marzo de 1997, p. 9549

Entry into force: In force since 10 March 1997

English title: Treaty between the Kingdom of Spain and the Republic of Ecuador on the compliance of criminal judgments, signed in Quito on 25 August 1995

39.

Title: Convenio entre el Reino de España y la República Árabe de Egipto sobre Traslado de personas condenadas, firmado en El Cairo el 5 de abril de 1994

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 26 June 1995, n.151, p. 19189

Entry into force: In force since 1 August 1995

English title: Treaty between the Kingdom of Spain and the Arab Republic of Egypt on the Transfer of sentenced persons, signed in El Cairo on 5 April 1994

40.

Title: Tratado sobre el traslado de personas condenadas entre el Reino de España y la República de El Salvador, firmado en San Salvador el 14 de febrero de 1995

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 8 June 1996, n. 139, p. 18992

Entry into force: In force since 10 June 1996

English title: Treaty on the transfer of sentenced persons between the Kingdom of Spain and the Republic of El Salvador, signed in El Salvador on 14 February 1995

41.

Title: Tratado sobre traslado de personas condenadas entre la República de Filipinas y el Reino de España, hecho en Madrid el 18 de mayo de 2007

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 15 January 2008, n. 13, p. 2608

Entry into force: In force since 28 December 2007

English title: Treaty on the transfer of sentenced persons between the Republic of Philippines and the Kingdom of Spain, done in Madrid on 18 May 2007

42.

Title: Tratado sobre traslado de personas condenadas entre el Reino de España y la República de Guatemala, hecho “ad referéndum” en Madrid el 26 de marzo de 1996

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 4 May 2007, n. 107, p. 19039

Entry into force: In force since 30 April 2007

English title: Treaty on the transfer of sentenced persons between the Kingdom of Spain and the Republic of Guatemala, done *ad referendum* in Madrid on 26 March 1996

43.

Title: Tratado sobre traslado de personas condenadas entre el Reino de España y la República de Honduras, hecho en Tegucigalpa el 13 de noviembre de 1999

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 10 May 2001, n. 112, p. 16830

Entry into force: In force since 30 April 2000

English title: Treaty on the transfer of sentenced persons between the Kingdom of Spain and the Republic of Honduras, done in Tegucigalpa on 13 November 1999

44.

Title: Convenio entre el Reino de España y el Reino de Marruecos relativo a la asistencia a personas detenidas y al traslado de personas condenadas, firmado en Madrid el 30 de mayo de 1997

Publication reference: Provisional application: BOE (Boletín Oficial del Estado/Official Journal) 18 June 1997, n. 145, p. 18682. Final publication: BOE (Boletín Oficial del Estado/Official Journal) n° 151, de 25 de junio de 1999, p. 24235

Entry into force: In force since 1 July 1999. Provisional application since 30 May 1997

English title: Treaty between the Kingdom of Spain and the Kingdom of Morocco on the assistance of imprisoned persons and the transfer of sentenced persons, signed in Madrid on 30 May 1997

45.

Title: Aplicación provisional del Convenio entre el Reino de España y la República Islámica de Mauritania relativo a la asistencia a personas detenidas y al traslado de personas condenadas, hecho el 12 de septiembre de 2006

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 8 November 2006, n. 267, p. 38832

Entry into force: Provisional application since 12 September 2006. On 9 May 2007, Spain informs the Embassy of Mauritania in Madrid that all constitutional formalities have been satisfied in order for this Agreement to enter into force. No evidence has been found as to whether the Treaty has entered into force (the information provided by the Official Journal usually included this and therefore it can be concluded – with a high degree of certainty – that the Treaty has not entered into force)

English title: Provisional application of the Treaty on assistance of imprisoned persons and the transfer of sentenced persons between the Kingdom of Spain and the Islamic Republic of Mauritania, done on 12 September 2006

46.

Title: Tratado entre España y los Estados Unidos Mexicanos sobre ejecución de sentencias penales, firmado “ad referendum” en Ciudad de México el 6 de febrero de 1987

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) n° 115, de 15 de mayo de 1989. Erratum: BOE (Boletín Oficial del Estado/Official Journal) n° 139, de 12 de junio de 1989

Entry into force: In force since 17 May 1989

English title: Treaty between Spain and the United States of Mexico on the enforcement of criminal judgments, signed *ad referendum* in the Mexico City on 6 February 1987

47.

Title: Convenio entre el Reino de España y la República de Nicaragua para el cumplimiento de condenas penales, firmado "ad referendum" en Managua el 18 de febrero de 1995

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) nº 140, de 12 de junio de 1997

Entry into force: In force since 15 May 1997. Instrument of ratification on 9 September 1996

English title: Treaty between the Kingdom of Spain and the Republic of Nicaragua on the compliance of criminal judgments, signed *ad referendum* in Managua on 18 February 1995

48.

Title: Tratado entre el Reino de España y la República de Panamá sobre traslado de personas condenadas, firmado en Madrid el 20 de marzo de 1996

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) nº 153, de 27 de junio de 1997, p. 19948

Entry into force: In force since 29 June 1997. Instrument of ratification on 19 December 1996

English title: Treaty between the Kingdom of Spain and the Republic of Panama on the transfer of sentenced persons, signed in Madrid on 20 March 1996

49.

Title: Tratado sobre traslado de personas condenadas entre el Reino de España y la República de Paraguay, firmado en Asunción el 7 de Septiembre de 1994

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 3 November 1995, n. 263, p. 31899

Entry into force: In force since 12 September 1995

English title: Treaty on the transfer of sentenced persons between the Kingdom of Spain and the Republic of Paraguay, signed in Asuncion on 7 September 1994

50.

Title: Tratado entre el Reino de España y la República del Perú sobre transferencia de personas sentenciadas a penas privativas de libertad y medidas de seguridad privativas de libertad, así como de menores bajo tratamiento especial, firmado en Lima el 25 de febrero de 1986

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 5 August 1987, n. 186, p. 23992

Entry into force: In force since 9 June 1987

English title: Treaty between the Kingdom of Spain and the Republic of Peru on the transfer of sentenced persons to loss of freedom or security measures of loss of freedom, as well as minors on special treatment, signed in Lima on 25 February 1986

51.

Title: Convenio entre el Reino de España y la República Dominicana sobre ejecución de sentencias penales, firmado en Madrid el 15 de septiembre de 2003

Publication reference: Provisional application: BOE (Boletín Oficial del Estado/Official Journal) nº 254, de 23 de octubre de 2003, p. 37884. Erratum: BOE (Boletín Oficial del Estado/Official Journal) nº 309, de 26 de diciembre de 2003, p. 46118. Final publication: BOE (Boletín Oficial del Estado/Official Journal) nº 279, de 22 de noviembre de 2006, p. 40879

Entry into force: Provisional application since 15 September 2003. In force since 1 December 2006

English title: Treaty between the Kingdom of Spain and the Dominican Republic on the enforcement of criminal judgments, signed in Madrid on 15 September 2003

52.

Title: Convenio entre el Reino de España y la Federación de Rusia relativo al traslado de personas condenadas para el cumplimiento de penas privativas de libertad, hecho en Moscú el 16 de enero de 1998

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 21 February 1998, n. 45, p. 6262. Erratum in BOE (Boletín Oficial del Estado/Official Journal) n. 63, 14 March 1998, p. 8918. Final publication in BOE (Boletín Oficial del Estado/Official Journal) 141, 13 June 2001, p. 20818

Entry into force: In force since 21 June 2001. Provisional application since 16 January 1998

English title: Treaty between the Kingdom of Spain and the Russian Federation on the transfer of sentenced persons for the compliance of penalties of loss of freedom, done in Moscow on 16 January 1998

53.

Title: Acuerdo entre el Gobierno de España y el Gobierno del Reino de Tailandia sobre cooperación en materia de ejecución de sentencias penales, firmado en Bangkok el 7 de diciembre de 1983.

Canje de Notas para modificar el art. 8, párrafo 1, del Tratado de 7 de diciembre de 1983, hecho el 16 y 18 de noviembre de 1987.

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) nº 295, de 10 de diciembre de 1987, p. 36285

Entry into force: In force since 1 December 1987

English title: Agreement between the Government of Spain and the Government of the Kingdom of Thailand on cooperation in relation to the enforcement of criminal judgments, signed in Bangkok on 7 December 1983

54.

Title: Convenio entre el Reino de España y la República de Venezuela sobre ejecución de sentencias penales, firmado en Caracas el 17 de octubre de 1994.

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) nº 276, de 18 de noviembre de 1995, p. 33520

Entry into force: In force since 18 December 1995.

English title: Treaty between the Kingdom of Spain and the Republic of Venezuela on the enforcement of criminal judgments, signed in Caracas on 17 October 1994

55.

Title: Convenio sobre traslado de personas condenadas entre el Reino de España y la República del Yemen, hecho en Madrid el 18 de octubre de 2007

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 7 February 2008, n. 33, p. 6722

Entry into force: In force since 1 March 2008

English title: Treaty on the transfer of sentenced persons between the Kingdom of Spain and the Republic of Yemen, done in Madrid on 18 October 2007

Other pertinent bilateral treaties

56.

Title: Acuerdo de Complementariedad y Apoyo Mutuo Diplomático entre España y Colombia, firmado en Madrid el 27 de junio de 1979

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 6 March 1981, n. 56, p. 4998

Entry into force: In force since 20 December 1980

English title: Agreement on Complementarity and Mutual Diplomatic Support between Spain and Colombia, signed in Madrid on 27 June 1979.

Summary: Art. 1 refers to the coordination of both diplomatic actions in third countries. Arts. 2 and 3 foresee the possibility for both countries to use the services provided by diplomatic missions in those countries where one of them does not have diplomatic representation. It only refers to nationals of both countries and no provision is included on the possibility of extending the Agreement to third countries. Art. 3: Certain countries are specifically excluded from the application of the Agreement

57.

Title: Acuerdo de 17 de abril de 1991 de complementariedad y apoyo mutuo diplomático entre España y Costa Rica, hecho en San José

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 2 May 1994, n. 104, p. 13501

Entry into force: In force since 27 July 1994

English title: Agreement of 17 April 1991 of complementarity and mutual diplomatic support between Spain and Costa Rica, done in San José

Summary: Similar to the former. Yet no specific exclusions are foreseen. The concrete contents of cooperation is left to Notes Exchanges. It formally states that the Agreement might be extended to consular services and not only to diplomatic protection

58.

Title: Acuerdo de Complementariedad y Apoyo Mutuo Diplomático entre el Reino de España y la República de Honduras, hecho “ad referéndum” en Tegucigalpa el 15 de febrero de 1995

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 7 February 2002, n. 57, p. 9340

Entry into force: In force since 26 November 2001

English title: Agreement on Complementarity and Mutual Diplomatic Support

Circulars, internal guidelines

59.

Title: Orden Circular n. 3208, Asistencia consular a ciudadanos del Principado de Andorra

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]³³.

Entry into force: 18 January 1995

English title: Circular Order n. 3208, Consular Assistance to citizens in the Principality of Andorra

Summary: Includes instructions on the fulfilment of the obligations of providing consular services on the basis of the Treaty of Good Neighbourhood, Friendship and Cooperation between the Kingdom of Spain, the French Republic and the Principality of Andorra

60.

Title: Orden Circular n. 3.264, Atención al público en las Oficinas Consulares de España

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 12 August 2004

English title: Circular Order n. 3.264, Information Service in Spain Consular Posts

Summary: The Circular Order urges Consular Post to provide an efficient service to citizens asking for help and also to Spanish communities living abroad, so that they feel the Consulate cares for them

61.

Title: Orden Circular n. 3.235, Calendario laboral, jornada de trabajo y horario en las Representaciones Diplomáticas y Oficinas Consulares de España

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 10 June 1999

English title: Circular Order n. 3.235, Working schedule, working hours and working timetable at Spain Diplomatic Representations and Consular Offices

Summary: This five-page text unifies in one document the various norms ruling these aspects, including the languages in which citizens shall be addressed

62.

Title: Orden Circular n. 3.239, Cuentas corrientes bancarias de las Representaciones Diplomáticas y Oficinas Consulares de España

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 30 September 1999

English title: Circular Order n. 3.239, bank checking accounts of Spain Diplomatic Representations and Consular Posts

Summary: In Spain there is an homogeneous system for checking accounts opened by public bodies. The particularities of Diplomatic Missions and Consular Posts allow them to follow other rules, which are foreseen in this document

³³ For some reasons, the webpage of the Ministry of Foreign Affairs provides the list of Circular Orders which are still in force, but it does only so in the catalan version of the webpage. Also, in order to have access to the contents, a password is required

63.

Title: Orden Circular n. 3.269, Cuestionario de datos personales de los Jefes de Oficina Consular Honoraria de España

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 14 June 2005

English title: Circular Order n. 3.269, Questionnaire on personal data of the Chiefs of Spain Honorary Consular Posts

Summary: Questionnaire to be filled in by candidates to Honorary Consulates

64.

Title: Orden Circular n. 3.023, Envío duplicados inscripciones y asientos marginales del Registro Civil Consular

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 23 June 1983

English title: Circular Order n. 3.023, Sending of duplicates of inscriptions and side entries of the Consular Registry Office

Summary: It contains working instructions and new deadlines

65.

Title: Orden Circular n. 3.141, Funciones de los Cancilleres como sustitutos del Encargado del Registro Civil Consular

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 18 January 1990

English title: Circular Order n. 3.141, Functions of Chancellors as substitutes of the person in charge of the Consular Registry Office

Summary: Chancellors shall pursue all functions granted to the person in charge of the Consular Registry Office in the cases in which the former substitutes the latter. The only exception is the public notary certification, which shall be provided by the nearest competent Consul

66.

Title: Orden Circular n. 3.254, Gestión de los asuntos administrativos en las Representaciones Diplomáticas y Oficinas Consulares de España

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 28 July 2003

English title: Circular Order n. 3.254, Management of administrative affairs at Spain Diplomatic Representations and Consular Posts

Summary: It contains the criteria to select the director/supervisor of all administrative activity carried out in the Diplomatic Representation or Consular Post

67.

Title: Orden Circular n. 3.127, Obligaciones consulares en materia del Impuesto de Sucesiones y Donaciones

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 23 January 1989

English title: Circular Order n. 3.127, Consular obligations concerning the Inheritance and Gift Tax

Summary: Consuls and the persons in charge of the consular offices at Embassies shall assume the functions conferred by the statute ruling the inheritance and gift tax to judges of the Registry Office and notaries public

68.

Title: Orden Circular n. 3.225, Información sobre la recaudación consular obtenida por las Representaciones Diplomáticas y Oficinas Consulares de España

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 02 July 1998

English title: Circular Order n. 3.225, Information on the consular income obtained by the Spain Diplomatic Representations and Consular Posts

Summary: It refers to the management of this income and includes procedural particularities

69.

Title: Orden Circular n. 3.147, Inscripción de tutela en el Registro Civil Consular

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 05 April 1990

English title: Circular Order n. 3.147, Inscription of Guardianship in the Consular Registry Office

Summary: It responds to a question asked by the Consul in Toulouse, France, related to the procedure to register a guardianship granted by French law and referred to a Spanish national

70.

Title: Orden Circular n. 2.903, Inscripción en el Registro Civil Consular de los matrimonios de españoles celebrados en el extranjero en forma religiosa reconocida por la Ley local

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 05 December 1987

English title: Circular Order n. 2.903, Inscription in the Registry Office of marriages between Spanish nationals celebrated abroad under a religious form recognised by local law

Summary: It refers to the legal background permitting the inscription of such marriages

71.

Title: Orden Circular n. 3.021, Legalización de Fes de Vida expedidas por los Encargados de los Registros Consulares

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 09 June 1983

English title: Circular Order n. 3.021, Legalisation of documents providing proof that a person is still alive, issued by the Officer in charge of Consular Registry Offices

Summary: It does not oblige to include such documents to be included in the Registry Office, but it allows to do so

72.

Title: Orden Circular n. 3.237 Matrimonio consular

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 28 June 1999

English title: Circular Order n. 3.237, Consular Marriage

Summary: It contains the various scenarios that can take place: marriages between Spanish nationals, between a Spanish national and a national of the reception State, or between a Spanish national and a third country national

73.

Title: Orden Circular n. 3.102, Matrimonio de españoles autorizado por el Encargado del Registro Civil Consular

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 25 September 1987

English title: Circular Order n. 3.102, Marriage between Spanish nationals authorised by the Officer in charge of the Consular Registry Office

Summary: It refers to the marriage procedure

74.

Title: Orden Circular n. 3.174, Inscripción de matrimonio en el Registro Civil Consular. Interpretación del artículo 68 del Reglamento del Registro Civil

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 01 April 1992

English title: Circular Order n. 3.174, Inscription of marriage in the Consular Registry Office. Interpretation of Art. 68 of the regulation of Registry Offices

Summary: It refers to the inscription of a marriage (Spanish national – national of the reception country) in the Registry Office of the Consulate by any of the members of the couple

75.

Title: Orden Circular n. 3.213, Directrices sobre protección a nacionales de países de la Unión Europea en terceros países por Embajadas y Oficinas Consulares de los demás países de la Unión

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 29 February 1996

English title: Circular n. 3.213, Guidelines on protection of other EU nationals in third countries by Embassies and Consular Offices of other countries of the Union

Summary: It includes and prologues the Decision of 19 December 1995

76.

Title: Orden Circular n. 2.881, Regulación del Depósito Consular

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 24 November 1977

English title: Circular Order n. 2.881, Regulation of the Consular Deposit

Summary: This order regulates the contents and requirements of consular deposits

77.

Title: Orden Circular n. 3.243, Remesas de ingresos de las Representaciones Diplomáticas y Oficinas Consulares de España

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 26 March 2001

English title: Circular Order n. 3.243, Income consignments of Spain Diplomatic Representations and Consular Posts

Summary: It refers to the procedure and deadlines of income consignments, which are usually made by bank transfer

78.

Title: Orden Circular n. 3.227, Requisitos generales para la aprobación de gastos en las Representaciones Diplomáticas y Oficinas Consulares

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 20 January 1999

English title: Circular Order n. 3.227, General Requirements for the expenses approval at Diplomatic Representations and Consular Posts

Summary: It develops in detail what the title of the Circular Order refers to

79.

Title: Orden Circular n. 3.218, Rótulos de información al público en las Representaciones Diplomáticas y Oficinas Consulares de España

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 21 October 1997

English title: Circular Order n. 3.218, Information signs for the general public at Spain Diplomatic Representations and Consular Posts

Summary: This Circular Order standardises the information signs in all Spain Diplomatic Representations and Consular Posts

80.

Title: Orden Circular n. 2.945, Subsanción de irregularidades y anomalías en los Registros Civiles Consulares

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 21 May 1981

English title: Circular Order n. 2.945, Rectification of irregularities and anomalies in Consular Registry Offices

Summary: It is a long order on the procedure to rectify the irregularities and anomalies

81.

Title: Orden Circular n. 3.167, Supresión habilitación Jefes Oficinas Consulares Honorarias firma visados

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 26 November 1991

English title: Circular Order n. 3.167, Abolition of the power granted to the Chiefs of Honorary Consular Posts to sign visas

Summary: The Circular Order refers that the abolition is due, mainly, to two arguments: firstly, the new immigration scenario; and, secondly, compromises achieved in the EEC and Schengen frameworks

82.

Title: Orden Circular n. 3.278, Teléfonos de emergencia de las Representaciones Diplomáticas y Oficinas Consulares de España

Publication reference: Not published; digital copy provided [source: “Órdenes Circulares”, CD from the Ministry of Foreign Affairs and Cooperation]

Entry into force: 26 March 2007

English title: Circular Order n. 3.278, Emergency numbers of Spain Diplomatic Representations and Consular Posts

Summary: Due to the increasing number of people travelling abroad, the need of an emergency phone number available 24/7 is deemed vital

Websites, reports

83.

Title: <http://www.maec.es>

Summary: Webpage of the Spanish Ministry for Foreign Affairs and Cooperation [last visit: 2 July 2010]

84.

Title:

<http://www.maec.es/es/MenuPpal/Consulares/RecomendacionesDeViaje/Paginas/vacia.aspx>

Summary: Travel recommendations of the Spanish Ministry for Foreign Affairs and Cooperation [last visit: 2 July 2010]

85.

Title: Recomendaciones de Viaje

Publication reference:

<http://www.maec.es/es/MenuPpal/Consulares/ServiciosConsulares/Paginas/HacerConsuladoPorUsted.aspx>

Summary: Specific site on Spanish consular services [last visit: 2 July 2010]

Other documents

86.

Title: Ley 40/2006, de 14 de diciembre, del Estatuto de la ciudadanía española en el exterior

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) n. 299, 15 December 2006, p. 44156, Erratum: BOE (Boletín Oficial del Estado/Official Journal) n. 31, 5 February 2007, p. 5248

Entry into force: In force since 16 December 2006

English title: Statute on the Status of Spanish Citizens abroad

Summary: This Statute should be understood in the framework of migration policies. Many Spaniards have migrated in different times in History, to different countries and for various reasons. This Statute pursues the acknowledgment of certain rights to Spanish migrants living abroad. These rights refer to a great array of matters, such as right to education, access to culture, right to work or the right to return.

Many of its clauses can be found in other statutes, regulations or State practice

87.

Title: Reglamento de Agentes Consulares Honorarios de España en el extranjero, Real Decreto 1390/2007, 29 de octubre de 2007

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 13 November 2007, n. 272, p. 4601

English title: Regulation of Spain Honorary Consular Agents abroad, Royal Decree 1390/2007, 29 October 2007

88.

Title: Real Decreto 8/2008, 11 de enero de 2008. Prestación por razón de necesidad a favor de españoles residentes en el exterior y retornados

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 24 January 2008, n. 21, p. 4601

English title: Royal Decree, 11 January 2008. Allowance for people in situation of need, applicable to Spanish citizens living abroad and those who returned

89.

Title: Real Decreto 426/1993, 26 de marzo de 1993, sobre las secciones de asuntos laborales y Seguridad Social en las Oficinas Consulares

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 14 April 1993, n. 89, p. 10785

English title: Royal Decree 426/1996, 26 March, 26 March 1993, on the sections of labour affairs and Social Security at Consular Posts

Summary: It is still in force and it mentions Community Law

90.

Title: Orden AEC/1418/2009, 25 Mayo, de creación de una Oficina Consular Honoraria en Salinas (Ecuador)

Publication reference: BOE (Boletín Oficial del Estado/Official Journal) 2 June 2009, n. 133, p. 46253

English title: Order AEC/1418/2009, 25 May, on the creation of an Honorary Consular Post in Salinas (Ecuador)

Summary: An example of various “Orders” (Decrees enacted by a Minister) establishing Honorary Consulates in different cities in the world. They only mention Spaniards and not other Community nationalities. This and other examples are provided as attached documents



Sweden - Sverige (SE)

1. Introduction

At present there are around half a million expatriate Swedes, i.e., Swedish citizens living and working temporarily or on a more long term basis in other countries. To these should be added an average of more than 200.000 Swedes travelling abroad each month. The Department for Consular Affairs and Civil Law at the Ministry for Foreign Affairs is responsible for consular assistance and Foreign Ministry travel recommendations. The Department also processes civil law and international civil law issues.

For this Report information has been gathered through legal documents and a questionnaire sent to Swedish embassies and consulates abroad.

From responses to the questionnaire it is clear that the embassies and consulates have been given guidelines on how to assist Union citizens by the Swedish Ministry for Foreign Affairs. These guidelines could not, however, be obtained and they are not part of this Report.

1.1. Terminology - National acronyms and definitions

Prop. - *Proposition*, Government Bill, legislative or other proposal submitted to the Swedish Parliament (*Riksdag*) by the Government.

RF- *Regeringsformen*, The Instrument of Government (The Swedish Constitution). RF sets out the basic principles for political life in Sweden defining rights and freedoms.

SFS- *Svensk författningssamling*, Acts and ordinances that are published in the Swedish Code of Statutes since 1925.

SOU- *Statens Offentliga Utredningar*, Swedish Government Official Reports series. Before the Government can draw up a legislative draft the issue has to be analysed and evaluated. The task may be assigned to officials from the Ministry concerned, a commission of inquiry or a one-man committee. Usually the reports setting out the conclusions are published in the Swedish SOU series.

UF- *Föreskrifter för utrikesförvaltningen*, Directions for the Foreign Administration.

2. Legal framework

Sweden's legal framework is made up of obligations stipulated in national law and EU law, by Sweden being a contracting party to multilateral and bilateral treaties and by informal arrangements, State policy and practice.

2.1. International law

Sweden is/is not a Party to the following multilateral conventions:

- Vienna Convention on Consular Relations: since 19 March 1974.
 - o Vienna Convention on Consular Relations - Optional Protocol on the Compulsory Settlement of Disputes: since 19 March 1974.

- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80): Sweden ratified this agreement on 4 October 1982 and the agreement entered into force on 5 November 1982.

Sweden is also a party to the Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality.

Sweden is a party to the Treaty of Cooperation between Denmark, Finland, Iceland, Norway and Sweden (the Helsinki Treaty), signed on 23 March 1962, which aims at developing Nordic cooperation in, for example, legislative, cultural, social and economic matters. Article 34 of the Helsinki Treaty states that Nordic citizens are given a possibility to seek assistance from Foreign Services Officers of any of the other High Contracting Parties, when outside the Nordic countries. This presupposes that the citizen of the Nordic country in question is not represented in the territory concerned.

Another Nordic agreement which Sweden is a party to is the **Nordic Convention on Social Security** of 18 August 2003. This Convention was concluded with the Governments of Denmark, Finland, Iceland and Norway. This agreement has a wider scope of coverage than the EU Regulation coordinating social security in the EU/EEA and applies also to persons not covered by the EEA rules, namely a limited number of Nordic nationals and nationals from third countries. This convention was incorporated into Swedish law through legislation in 2004 (SFS 2004:114).

2.2. Transposition of international law into national law

Since Sweden has the system of **dualism** with regard to the relationship between international law and national law, the international treaty must either be incorporated or transformed into Swedish law. In general, this means that international treaties are not directly applicable. If the national law is perceived to be in full compliance with international treaty it is sufficient to note that harmony exists between national and international law, so-called *normharmoni* (Prop. 1993/94: 117 p. 32).

2.3. Implementation of European law into national law

The reference to European Law is made in Chapter 10 of the Instrument of Government (RF) regarding relations with other states and international organisations. Article 5 of this Chapter allows the Swedish Parliament – *Riksdag* – to transfer its decision-making authority to EU institutions which do not affect the principles of the Swedish form of government. Such transfer presupposes that the EU decisions should not violate the rights consequent upon the Instrument of Government or upon the European Convention for the Protection of Human Rights and Fundamental Freedoms.

It is worth mentioning that a working committee has been given the task of conducting a concerted review of the Constitution. The Working Committee has proposed that the Constitution should include a clear reference to Swedish membership of the European Union and that this reference should be placed in the introductory Chapter among the basic principles of the Swedish form of government (SOU 2008:125 p. 47-48). Today, the Constitution does not contain any general provisions concerning Sweden's other areas of international cooperation with other countries and international organizations. This has been criticised and it is matter suggested by the Working Committee to be improved in the new Constitution.

Article 23 TFEU and Decision 95/553/EC are directly applicable in Sweden.

2.4. National law

In the Ordinance ([SFS 1992:247](#)) with Instructions for the Foreign Representation it is stated in Article 14 that embassies and consulates shall assist Union citizens in third countries in accordance with what have been agreed upon by the Member States of the European Union. It is also stated that assistance shall be given to citizens of Iceland and Norway in accordance with the Nordic arrangement. In Article 41 of the above mentioned ordinance the Ministry for Foreign Affairs is given the power to decide upon more detailed regulations that concerns citizens of European Union, Iceland and Norway.

The Ministry for Foreign Affairs has decided upon two regulations of interest for this Report. First, Regulation ([UF 1996:9](#)) regarding Assistance to Union Citizens and, second, Regulation ([UF 2000:7](#)) regarding Assistance to Icelandic and Norwegian Citizens.

According to Article 2 of the Regulation (UF 1996:9) the person who seeks assistance must prove that he/she is citizen of a Member State of the European Union by showing his/hers passport or identity card. If these documents are lost, other proof of nationality can be accepted. When necessary, the Swedish authority abroad can turn to the authorities in the country in question to control the information given by the person.

According to Article 3 of (UF 1996:9) assistance shall be given in the following cases.

- cases of death,
- cases of serious accident or serious illness,
- cases of arrest or detention,
- to victims of violent crime and
- the relief and repatriation of distressed citizens.

According to the last paragraph of the Article the Swedish authorities abroad can assist the citizens regarding other concerns on request.

Financial assistance is also regulated. In Article 4 it is stated that **no financial assistance may be given to the citizen of the Union without the permission of the Foreign Ministry of the Member State of which that citizen is a national.** In particular situations communication could be set aside. Finally, details are given regarding the reimbursement of the financial help.

The Regulation (UF 2000:7) regarding assistance to citizens of Iceland and Norway is more detailed in cases when assistance should be provided. Article 2 contains an exhaustive list of which situations assistances could be given. In addition to those situations mentioned in the regulation concerning citizens of European Union, assistances are provided to citizens who are in war and situations of crisis. Assistance may also be given regarding e.g., advice and information concerning the local situation and in contacting the Icelandic or Norwegian Ministry for Foreign Affairs.

Sweden has a Law ([SFS 2003:491](#)) on Consular Economic Aid. In accordance to this it is the responsibility of the State to be a last resort for help. The consular regulations may also apply in the event of a disaster that concerns many people and when a host country's resources are severely stretched. **It was however clear after the tsunami disaster in Asia 2004 and the Lebanon crisis in 2006 that the consular regulations do not readily adapt to cope with situations in which many people need help and where there is competition for resources (SOU 2008:23 p. 20-21).**

The experiences from the aforementioned incidents 2004 and 2006 initiated political initiatives. At present an official committee has been assigned in order to investigating the degree of State responsibility in relation to individuals, insurance companies and

travel agencies. This revision (SOU 2008:23 p. 31-33) has resulted in a **legislative proposal from the Government of a new Law on Consular Disaster Response** (Prop. 2009/10:98). **The law entered into force on 1 August 2010.**

According to this law the State shall carry out consular disaster response to assist individuals when many people connected to Sweden are affected by a crisis or disaster abroad and the evacuation and other measures can not be met in another way. When taking a decision whether to carry out a disaster response or not, the nature of the crisis or disaster, its consequences and circumstances otherwise will be taken into account. The following groups are covered by the law:

- Swedish citizens,
- Swedish citizens' family members,
- Foreigners living in Sweden
- Citizens of Denmark, Finland, Iceland and Norway, and their family members, to the extent arising from Sweden's consular obligations to these countries stated in Article 34 of the Helsinki Treaty
- Citizens from the European Union, to the extent arising from Sweden's consular obligations to Member States of the European Union in accordance with TFEU.

Furthermore the person covered by the Law on Consular Disaster Response shall reimburse the State for expenses incurred when he/she received transportation or medical care.

The new law refers also to the **Law (SFS 2008:552) on Emergency Medication as part of the Swedish Operations Abroad**. The law states that in efforts to support foreign operations and people in need in a situation where many people domiciled in Sweden suffer from a serious accident or disaster abroad, a county council may carry out health care abroad in order to minimize the physical and psychological consequences of the accident or disaster. The matter of Emergency Medication as part of the Swedish operations abroad is also regulated in Ordinance (2008:553) on Emergency Medication as part of the Swedish Operations Abroad.

2.5. Documentation of consular protection

The Swedish Ministry for Foreign Affairs has published a series of legal handbooks which are publicly available. The aim of the handbooks is to provide the government authorities, such as embassies and consulates, with support (or advice) regarding existing laws so that the practice of these laws will be coherent. In the Legal Handbook concerning Assistance for Individuals and Government Authorities there is a chapter concerning consular protection of Union citizens in third countries ([Rättshandbok I, 2002](#)). In the beginning of this chapter the relevant Swedish law is mentioned and at the end of the handbook some examples of forms of assistance are given. The handbook does however not give any reference or summaries of practice on consular protection.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1. Contractual framework

As mentioned above, **in Sweden the legal basis for consular services constitutes the Vienna Convention on Consular Relations**. Sweden is not a party to any other multilateral agreement. In general, Swedish citizens living in Sweden and refugees and stateless persons living in Sweden are entitled to consular protection, comparable to the principal groups covered by the Law (SFS 2003:491) on Consular Economic Aid.

3.2. Statistical data on consular practice

Due to the lack of official statistic from Swedish authorities a questionnaire was sent to the Swedish embassies and consulates in third countries. **Forty- one out of the ninety embassies and consulates have answered the questionnaire.**

The greater number of responding embassies and consulates has stated that they have not had the opportunity to help a Union citizen. In some cases this is due to the fact that there are very few Union citizens travelling/living in the country in question and in other cases most of the Member States are represented in the country concerned. **It is clear that assisting Union citizens is not an onerous task for the Swedish embassies and consulates.**

Another conclusion that can be drawn from the responses received is that **very few embassies and consulates have experienced problems providing assistance to Union citizens.** There also seems to be a well developed cooperation between Member States' embassies and consulates in third countries. Accordingly it is worth pointing out that **Swedish citizens have also received assistance from other Member States' representations.**

Sweden has provided assistance to Union citizen, mainly by providing emergency travel documents. Sweden has also assisted and repatriated distressed Union citizens.

4. Consular protection in detail

The legal basis for consular services in Sweden constitutes the Vienna Convention on Consular Relations. Rules of the European Union are directly applicable.

As mentioned Article 14 of the Ordinance (SFS 1992:247) with Instructions for the Foreign Representation states that embassies and consulates shall assist Union citizens in accordance with agreements with Member States on protection of Union citizens in third countries. Furthermore the Article states that assistance shall be given to Norwegian and Icelandic citizens in accordance with the Nordic arrangement.

According to Regulation (UF 1996:9) regarding Assistance to European Citizens embassies and consulates shall assist Union citizens in cases of death, in cases of serious accident or serious illness, in cases of arrest or detention, who are victims of violent crime and with relief and repatriation when the citizens are distressed. In addition, embassies and consulates may assist Union citizens in other matters.

Sweden has on several occasions shared embassies or consulates with other countries, first and foremost with other Nordic countries. It is important for the Swedish Foreign Ministry to establish new embassies and consulates where needed. For that reason new Swedish offices have been established in e.g., Phnom Penh and Chisinau. **At the same time some consulates have been closed for financial reasons such as the consulate in Los Angeles. For the same reason the consulates in New York and Dublin will be closed in the near future.**

4.1. Right to consular (and diplomatic) protection

In general, **Swedish citizens living in Sweden, refugees and stateless persons living in Sweden are entitled to consular protection.** Consular protection can be extended to Swedish citizens living abroad and other foreigners living in Sweden on particular grounds, comparable to the principal groups covered by the Law (SFS 2003:491) on Consular Economic Aid.

4.2. Assistance in cases of death

Swedish diplomatic or consular missions will take **appropriate measures to notify next-of-kin and assist in the identification process**. Furthermore Swedish diplomatic or consular missions will notify the Ministry for Foreign Affairs and the deceased's insurance company. **This protection comprises Swedish citizens living in Sweden, Swedish citizens with next-of-kin living in Sweden and stateless persons and refugees living in Sweden or with next-of-kin living in Sweden.**

Swedish diplomatic or consular missions will also, after instructions from the Ministry for Foreign Affairs, arrange for the deceased to be buried. For Swedish citizens living in Sweden State funds will normally cover the expenses when the deceased were destitute and had no insurance. In some cases State funds will cover the expenses when the deceased was a Swedish citizen living abroad. Only in exceptional cases will State funds cover the expenses when the deceased were a foreigner living in Sweden but passed away abroad.

Swedish diplomatic or consular missions will also assist in obtaining a death certificate when the deceased, irrespective of citizenship, were living in Sweden, or were a Swedish citizen, who at some point had been living in Sweden.

Relevant laws and regulations:

Regulation (UF 1987:12) on Measures to be taken in Case of Death abroad

4.2.1. Identifying and repatriating remains

Swedish diplomatic or consular missions will, as stated above, when necessary, assist in the identification process. Assistance is given by a special Identification Commission.

Swedish diplomatic or consular missions will take appropriate measures to repatriate the remains or bury the deceased. A condition for assistance in repatriating remains is normally that next-of-kin make a deposit to the Ministry for Foreign Affairs. In some situations there is also a possibility to have costs covered by State funds.

After the Tsunami disaster in 2004 repatriation of remains was given high priority.

Relevant laws and regulations:

Ordinance (SFS 1988:530) regarding the Special Identification Commission

Regulation (UF 1987:12) on Measures to be taken in Case of Death abroad

4.3. Assistance in cases of serious accident or serious illness

In cases of serious accident Swedish embassies or consulates will investigate whether a Swedish national has been injured or killed. During this investigation a representative of the embassy or consulate will, if possible, visit the place of the accident. The embassy or consulate reports to the Ministry for Foreign Affairs, which decides on appropriate measures.

Relevant laws and regulations:

Ordinance (SFS 1992:247) with Instructions for the Foreign Representation

Ordinance (SFS 1988:530) regarding the Special Identification Commission

4.4. Assistance in cases of arrest or detention

Swedish diplomatic or consular missions will inform the Ministry for Foreign Affairs as soon as the mission is notified that a Swedish citizen, living in Sweden, is taken into arrest or detention. The notification to the Ministry for Foreign Affairs shall be sent as soon as possible. The notification should contain information whether the detainee

wishes for his/her next-of-kin to be informed. However, **personal information about the detainee is protected by law and therefore the detainee has to give his/her consent before the information is forwarded.**

Since Sweden is party to the Vienna Convention on Consular Relations of 1963, Article 36 of this Convention concerning communication and contact with nationals of the sending State shall also be taken into account.

The embassy or consulate shall assist the detainee in ways demanded by the situation, taking into account the seriousness of the crime and other relevant circumstances. When the crime is serious, the detainee is under age or the conditions in the country where the detainee is being held in many ways differ from Swedish conditions, the diplomatic or consular mission have an extensive obligation to assist the citizen in question. If the detainee has a strong connection to the country where he/she is being held, the embassy's or consulate's obligations are less extensive. The Swedish diplomatic or consular mission will try to visit the detainee regularly.

A detainee – who is a Swedish citizen living in Sweden – has to some extent the right to financial assistance. This financial assistance can for example cover legal advice. A Swedish citizen – not living in Sweden – can receive financial assistance only in some specific situations.

The Swedish diplomatic or consular mission will see to it that the case is tried in a court of law within reasonable time.

Refugees and stateless persons are to be compared with Swedish citizens in matters of financial assistance.

Relevant laws and regulations:

Law (SFS 1973:137) on Economic Aid to Swedish citizens abroad

Law (SFS 1996:1619) on Legal Aid

Law (SFS 2009:400) on Public Access to Information and Secrecy

Regulation (UF 1990:3) on Economic Assistance in Criminal cases

Regulation (UF 2000:15) on Honorary Consulates and Honorary Consuls

Regulation (UF 1990:2) on Economic Assistance to citizens abroad

4.5. Assistance to victims of violent crime

A victim of a violent crime can receive assistance for example in contacting doctors, lawyers, booking hotel and making travel arrangements. **Financial support can be granted for legal advice.**

Relevant laws and regulations:

Law (SFS1973:137) on Economic Aid to Swedish citizens abroad

Law (SFS 1996:1619) on Legal Aid

Law (SFS 1988:609) on Counsel for the Plaintiff

Regulation (UF 1990:3) on Economic Assistance in Criminal cases

4.6. Relief and repatriation of distressed citizens

Repatriation of distressed citizens is a measure given high priority. This was clear after the tsunami in Asia in 2004 and the Lebanon crises in 2006.

Most Swedish citizens who were in Thailand during the tsunami in 2004 could travel back to Sweden through their travel agencies, but in Lebanon the evacuation through State measures was necessary due to the fact that the conflict made it impossible for civil transports to evacuate people from the area.

4.6.1 Natural disasters

Immediately after the **tsunami disaster** in Asia in 2004, many Swedish citizens involved assumed that the Swedish State would quickly come to their rescue. Many were disappointed when their acute needs were not fulfilled. The incident also made it clear that the public and the media had greater expectations concerning the responsibility of the State than was realized. The State's responsibility when it comes to disaster aid comes into effect only in special, rare situations. **The State's contribution is meant to be a complement to the resources provided by the host country, the individuals' insurance companies and travel agencies**, but in this case the reactions were considered to be inappropriate.

After the tsunami the Swedish preparedness for crises and disasters abroad has increased. Among other things, the Ministry for Foreign Affairs now has a completely different organization and a **rapid deployment force for crises situations has been set up**. The Swedish diplomatic or consular mission in the country concerned can also be supported by a specific **support force**. The support force is a cooperation between the Swedish Rescue Services Agency, the Swedish Police Service and the National Board of Health and Welfare, the Swedish Red Cross, Save the Children and the Swedish Church. Only a few hours after the earth quake in **Haiti**, Sweden took its first decision to give financial help.

To contribute to **international humanitarian aid** is considered to be a very important matter in Sweden, for example Sweden is the number one giver to United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and the second largest giver to OCHA's Central Emergency Revolving Fund (CERF). Through the financial contributions to CERF Sweden helped with SEK 26.000.000 to the first humanitarian contributions on Haiti. Sweden also contributed with SEK 425.000.000 to CERF after the flash-appeal from OCHA. Furthermore Sweden contributed with SEK 21.500.000 to World Food Programme (WFP).

Swedish International Development Cooperation Agency, SIDA, is part of a global cooperation in which Sweden is one of many international participants. In order to carry out its work SIDA cooperates with government agencies, associations and organizations in Sweden and international bodies like the UN, the EU and the World Bank. SIDA's mission is to help create conditions that will enable poor people to improve the quality of their lives. SIDA helped with SEK 165.000.000 to the work in Haiti.

The task of the **Swedish Civil Contingencies Agency (MSB)** is to enhance and support societal capacities for preparedness for prevention of emergencies and crises. When an emergency or a crisis occurs, MSB support the stakeholders involved by taking measures to control the situation. MSB sent IT and communication equipment and personnel to **Haiti** on 14 January 2010, which arrived on 15 January. The delay was due to the chaotic situation at the airport. MSB also sent about 20 people to Haiti to build a base camp for UN personnel, among them electricians and heating, ventilation and sanitation personnel. The base camp had Swedish/Danish management. Sweden, Finland, Denmark, Norway and Estonia also cooperated in the organization around the base camp. As chairman of International Humanitarian Partnership (IHP) Sweden also cooperated with other countries in organizing and securing transports to Haiti.

On 4 February 2010 the Swedish Government decided to finance a personnel contribution of three policemen and four prison and probation personnel. The cost of this contribution was estimated to SEK 5.700.000.

Sweden also informed the Monitoring and Information Centre (MIC) about the possibility to put the Swedish ambulance plane at disposal for the transportation of injured Union citizens.

On 31 March 2010 Sweden had contributed with SEK 336.000.000 in support for humanitarian aid and rebuilding the country.

Since women and children are especially vulnerable in these situations, Sweden has emphasized the importance of allowing women to take part of the process of rebuilding the future Haiti on equal terms as men.

Relevant laws and regulations:

Ordinance (SFS 1992:247) with Instructions for the Foreign Representation

Ordinance (SFS 1988:530) regarding the Special Identification Commission

4.6.2 Terrorist acts

No specific instructions for the diplomatic and consular missions on how to handle situations related to terrorist acts could be found. If a crisis occur Swedish embassies and consulates will continue their work until other instructions are given or it becomes impossible for the mission to stay in the area.

Swedish embassies and consulates will provide updated information about the situation in the area. Embassies and consulates will inform the Ministry for Foreign Affairs and will also try to keep in contact with Swedish citizens in the area.

After the **bombings in Bali 2002** the Swedish embassy in Jakarta sent their most experienced ambassador to Bali. The Swedish consulate in Bali had then already started searching for wounded Swedish national in hospitals. The Swedish ambassador participated in meetings where the Member States compared measures and advice and discussed the situation and security. It was also of importance for the Swedish missions to maintain preparedness for a larger crisis. Initially helping physically wounded Swedes were prioritised. Transports to Australia and Singapore for wounded persons were organised. At the same time much effort was put into identifying Swedish national. Questions concerning e.g., tickets were answered and the embassy's home page was continuously updated. The Swedish embassy contacted local authorities to arrange a travel permit for a Swedish commission working with identification of Swedes. **The Swedish embassy in Jakarta had no information on Union citizens seeking the embassy's assistance.**

Relevant laws and regulations:

Ordinance (SFS 1992:247) with Instructions for the Foreign Representation

4.6.3 Pandemics

In case of contagious diseases Swedish embassies and consulates will report back to the **Swedish Institute for Infectious Disease Control** (*Smittskyddsinstitutet*). The Institute will then forward the information to medical services, doctors and other authorities concerned.

Swedish embassies and consulates will also carefully follow the recommendations from the WHO and the Swedish Institute for Infectious Disease Control and update their travel recommendations.

Relevant laws and regulations:

Ordinance (SFS 1992:247) with Instructions for the Foreign Representation

4.6.4 Military conflicts

Lebanon crises – July / August 2006

Sweden evacuated over 8.400 people, Swedish citizens and others, from Lebanon during the crises. The Ministry for Foreign Affairs chartered 53 planes, three ships and about fifteen buses.

Compared to the other Member States, Sweden had one of the highest capacities to evacuate people due to the chartered ships. Since Swedish personnel were among the first to arrive to the scene they became responsible for co-ordinating the receiving of Union citizens.

On 19 July 2006 it was clear that Union citizens could be offered room on Swedish chartered ships. No statistics on how many Union citizens were evacuated have been found.

71 Swedish citizens were evacuated by a Danish bus convoy. Swedish citizens were also evacuated with help from other Member States, mainly by ship.

Evacuation can also come to include people that according to Article 2 of the Regulation (UF 2000:6) on the Preparedness of the Authorities abroad should be compared with Swedish citizens.

How the [*Guidelines on consular protection of EU citizens in third countries*](#) should be used in different cases has been left for the head of the embassies and consulates to decide upon.

Relevant laws and regulations:

Regulation (UF 2000:6) on the Preparedness of the Authorities abroad

4.6.5 Financial advances

Embassies and consulates will not give financial assistance without approval from either the Ministry for Foreign Affairs or the closest representation of the distressed Union citizen's Member State. There may, however, be particular situations where approval is not needed.

The citizen receiving financial assistance shall, in general, undertake to pay back the expenses to his/her own State authorities. The Ministry for Foreign Affairs will then turn to that Member State for payment.

Article 6 of the Law ([SFS 2003:491](#)) on Consular Economic Aid regulates aid in situations of need/distress and other difficulties. According to Article 14 a citizen who has received aid in accordance with only Article 6 is obligated to pay back the aid received. Article 1 of the Ordinance (SFS 1982:29) on Fees for Consular Aid, states that the person who has received aid should pay a **fee** of SEK 600. According to Article 2 of the Ordinance (SFS 1982:29) a fee of SEK 600 should also be paid for the following services: transfer of money from a private person, bank balance or similar funds to a mission abroad; exchange of cheques or banknotes; and payments concerning insurance companies. A decision concerning fees regulated in Article 2 cannot be appealed. This is regulated in Article 3 of the Ordinance (SFS 1982:29).

Relevant laws and regulations:

Regulation (UF 1996:9) regarding Assistance to Union Citizens

Law (SFS 2003:491) on Consular Economic Aid

Ordinance (SFS 1982:29) on Fees for Consular Aid

5. Emergency travel document (ETD)

Several of the responding embassies have assisted Union citizens with ETDs.

The Swedish embassy in Zagreb issued **three** European Travel Documents last year for a family from Lithuania. The Swedish embassy contacted the Lithuanian embassy in Vienna. The Swedish embassy experienced no problems in assisting the Lithuanian family in this matter.

The Swedish embassy in Abuja has reported that the embassy issues **one or two ETDs each year**. It is normally Danish citizens seeking the embassy's assistance. The embassy has also had experience of Swedish citizens receiving assistance with ETDs from the Danish embassy in Accra.

The Swedish embassy in Rabat has received inquiries concerning ETDs from Union citizens. Since the inquiries have been made during times when the embassy has been undermanned the embassy has recommended Union citizens to turn to consulates with more resources.

The Swedish embassy in Teheran has reported having assisted Union citizens with ETDs in **two** cases. The embassy has also tried to help an Estonian national with a smaller matter.

During the last three years the Swedish embassy in Hanoi has assisted Union citizens with ETD's in **two** cases. It was Latvian nationals seeking the embassy's assistance.

The Swedish embassy in Singapore has assisted a Union citizen with ETD when the person's passport was stolen. The embassy has also reported another case when a new born baby was in need of a passport. At least one of the parents was a Union citizen. However, Article 23 TFEU was not applicable to the situation since the parents did not want to comply with their home lands regulations and travel to Bangkok where they could get assistance with ETDs.

During 2008 the Swedish embassy in Nairobi has had **one** case when they needed to assist a Union citizen with ETD.

The Swedish embassy in Skopje has reported **one** case of assistance with ETD to a Union citizen. It was a new born baby with a Finnish father.

The Swedish embassy in Havana has assisted Latvian and Estonian nationals with ETDs in a few cases.

During the last two years the Swedish embassy in Colombo has assisted Union citizens with ETDs in **three** cases.

The Swedish embassy in Pretoria has, at several times, contacted the Finnish embassy in Namibia and the German embassy in Botswana to assist Swedish citizens with ETDs through their help.

At one time the Swedish consulate in Istanbul has denied a Finnish citizen assistance concerning ETD, due to the fact that Finland has own representation in the country.

It is worth mentioning that Sweden has taken a decision to include Article 23 TFEU in Swedish passports.

6. Relevant diplomatic protection

In Sweden consular and diplomatic protection is provided for Swedish and EU-nationals. In general, consular and diplomatic protection is also extended to family members who are not nationals of a Member State. Refugees and stateless persons living in Sweden are in some extent entitled to consular protection, comparable to the principal groups covered by the Law (SFS 2003:491) on Consular Economic Aid.

7. Summary

Sweden is party to the most important international treaties on diplomatic and consular protection. Sweden has also concluded some bilateral treaties and maintains informal agreements.

Sweden provides assistance to Union citizens according to Article 23 TFEU. So far, some but not extensive practice in the area exist. The assistance Sweden has provided to Union citizens mainly concerns emergency travelling documents and repatriation of distressed Union citizens.

There is a strong tradition among the Nordic countries to cooperate and turn to each other for assistance. From the questionnaire sent out it is clear that citizens of Nordic countries often turn to embassies or consulates of other Nordic countries when in need of assistance. Swedish citizens are also often directed to other Nordic embassies and consulates when Sweden has no representation in a third country.

The responses to the questionnaire used in this study also show that the staff at the embassies and consulates is very well aware of Article 23 TFEU and the obligation to assist Union citizens. However, the lack of more practice in the area might be a sign of the citizens are not fully aware of this right. If this is the case, the citizens' knowledge could hopefully be increased when Article 23 TFEU is included in the passports.

8. List of important documents

National Legislation

1.

Title: Förordning (1992:247) med instruktion för utrikesrepresentationen

Entry into force: 1/7/ 1992

English title: Ordinance (SFS 1992:247) with Instructions for the Foreign Representation

Short summary: Art. 14 is of interest for this Report which states that embassies and consulates shall assist Union citizens in third Countries in accordance with what have been agreed upon by the Member States of the European Union.

2.

Title: Utrikesdepartementets föreskrifter om bistånd åt medborgare i medlemsländerna i Europeiska unionen

Entry into force: 28/11/1996

English title: Regulation (UF 1996:9) regarding Assistance to Union Citizens

Short summary: Art. 3 of this regulation illustrates the cases in which assistance shall be given to citizen of a Member State of the European Union. The Swedish authorities can also on request assist the person regarding other concerns.

3.

Title: Regeringskansliets föreskrifter om bistånd åt medborgare i Island och Norge

Entry into force: 01/02/2000

English title: Regulation (UF 2000:7) regarding Assistance to Icelandic and Norwegian Citizens

Short summary: This regulation concerns assistance to citizens of Island and Norway and contains more detail in cases when assistance should be provided.

4.

Title: Lag (2003:491) om konsulärt ekonomiskt bistånd

Entry into force: 1/9/2003

English title: Law (SFS 2003:491) on Consular Economic Aid

Short summary: This law states that Swedish citizens and refugees and stateless persons living in Sweden are entitled to consular economic aid. In certain situations are Swedish citizens living abroad and other foreigners than refugees and stateless persons living in Sweden entitled to this aid.

5.

Title: Förordning (1982:29) om avgifter för konsulärt bistånd

Entry into force: 14/1/1982

English title: Ordinance (SFS 1982:29) on Fees for Consular Aid

Short summary: This ordinance states that a fee of SEK 600 should be paid when receiving aid according to Article 14 of the Law (SFS 2003:491) on Consular Economic Aid. A fee of SEK 600 should also be paid for other services. The decision to pay a fee for other services is not possible to appeal.

6.

Title: Lag (2008:552) om katastrofmedicin som en del av svenska insatser utomlands

Entry into force: 1/9/2008

English title: Law (SFS 2008:552) on Emergency Medication as part of the Swedish Operations Abroad

Short summary: This Law gives the County Council the possibility to carry out health care abroad.

[Other documents](#)

7.

Title: Rättshandbok I, Biträde åt enskilda och myndigheter

Entry into force: 01/11/2002

English title: Legal Handbook concerning Assistance for Individuals and Government Authorities

Short summary: This handbook provides the government authorities, such as embassies and consulates, with support regarding existing laws and regulations e.g UF 1996:9 and 2000:7.



The Netherlands - Nederland (NL)

1. Introduction

This Report contains the legal framework and national practice of The Netherlands on consular and diplomatic protection.

The basis of the report is: information available through the website of the Ministry of Foreign Affairs¹, case law², the national treaty-database (*Tractatenblad*³) and informal interviews with officials from this Ministry and related internal documents.

1.1. Terminology

The definitions as provided for in the various international treaties and conventions will be relied on (such as the EC Treaty and the Vienna Convention on Consular Relations, defining for instance the concepts of EU-Citizen and Consular Assistance). ‘Ministry’ refers to the Ministry of Foreign Affairs. Recourse will also be had to the understanding of the legal principles involved by scholars and institutions such as the International Law Commission, and the Reports prepared by Special Rapporteur John Dugard. The use of abbreviations has been limited to recognised ones (such as UN, ILC, EU etc.) and they are not explained separately.

2. Legal framework

The Dutch legal framework consists of international treaties and conventions in force and Dutch national law.

It should be stressed that **the Dutch legal order does not recognize any right to either consular assistance or diplomatic protection.**

Case law has developed the concept of legitimate expectation combined with a prohibition on arbitrary treatment, which forces the executive to consider a request for assistance seriously and in a similar way as other such requests, but it leaves the decision whether or not to assist a national and if so in what way to the discretion of the executive (the Ministry).⁴ As has been stated by various judges, the executive (i.e., the Ministry) will consider a request for assistance and will not arbitrarily reject it. However, it has no obligation to act: if the Ministry considers that there are valid reasons not to assist or protect a national abroad, then it will be at liberty to refrain from any action on behalf of this national. As the [Van Dam case](#) and other cases show, there is a presumption that the Ministry will offer assistance and protection as it is appropriate. This is similar to [judicial decisions in the United Kingdom](#) (e.g., the Abassi case), in which the court decided that British nationals have a legitimate expectation to be treated similarly to other nationals in similar situations. This

¹ www.minbuza.nl

² www.rechtspraak.nl

³ www.overheid.nl

⁴ For details, see A.M.H. Vermeer-Künzli, ‘Restricting Discretion: Judicial Review of Diplomatic Protection’, 75 Nordic Journal of International Law 279-307 (2006).

presumption, however, is not provided for in an express legal provision. It is the opinion of the judges in the relevant cases and although it is likely that they will continue to hold this opinion, it is not something that has been codified in law. See for a detailed discussion the paper referred to in the footnote.

2.1 International law

The Netherlands are party to:

- Vienna Convention on Consular Relations, acceded on 17 December 1985. The Convention is applicable to the European part of the Netherlands and the Dutch Antilles and Aruba. No reservations were made, but the Netherlands objected to a number of other reservations, without however rejecting the reserving State as a party to the Convention.
 - Vienna Convention on Consular Relations Optional Protocol on the Compulsory Settlement of Disputes, ratified on 17 December 1985. The Protocol is applicable to the European part of the Netherlands and the Dutch Antilles and Aruba
- Agreement on the Transfer of Corpses, Strasbourg, 26 October 1973 (ETS 80), entry into force on 25/12/1975. The Netherlands have attached a declaration to the extent that the Agreement is applicable to the European part of the Netherlands, but also to the Dutch Antilles and Aruba.
- European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers, London, 7 June 1968, entry into force on 10/10/1970.

In the past, The Netherlands did have bilateral arrangements. The only two bilateral agreements that can be found are one between The Netherlands and the Kingdom of Siam (now Thailand) and between The Netherlands and Oman. Also,

The Netherlands have concluded many bilateral agreements concerning the possibility of spouses of consular officers to work in the host country. This, however, is unrelated to consular assistance proper.

2.2 Transposition of international law into national law

The Netherlands is a monist country. International law is directly applicable upon publication in the official journal of treaties and legislation (*‘Tractatenblad’*). Pursuant to Articles 93 and 94 of the Dutch Constitution, Dutch citizens can only rely in court upon rules of international law after they have been published officially and if they are such that they affect individuals as such and when they are sufficiently clear to be applied by the national judge. Case law has established that citizens can invoke provisions of human rights treaties, such as the right to strike and certain provisions of ILO-treaties, but not provisions such as the prohibition on the use of force in Art. 2(4) of the UN Charter. **The VCCR will probably not lend itself for direct invocation, not because it is not directed at individuals, but because it does not create obligations for the State of nationality (but rather for the receiving State, see the *LaGrand* and *Avena* decisions of the ICJ).** So far, no case has been brought on the basis of the relevant EU provisions.

It remains to be seen how a court will determine their applicability. One element in determining this is constituted by the intention of the parties to the treaty, and since the EU Member States did not intend to create a direct right to consular assistance or

diplomatic protection, it is perhaps unlikely that a court will find such a right but this is not impossible.

The most important document is the Vienna Convention on Consular Relations, as ratified by the Netherlands. No specific other national legislation implementing international law has been adopted.

The only directly applicable law is, therefore, the ratified international treaties, but the extent to which these can be relied on by individual nationals in court will depend on the interpretation by judges as individual rights.

2.3. Implementation of European law into national law

No specific legislation has been adopted implementing the relevant European Law into the Dutch legal order. Given the monist nature of our system, this is also not necessary. The direct effect of EU law and the provisions in the Dutch Constitution ensure that individuals can rely on EU law in Dutch courts, provided the legislation in question is directly applicable to individuals. There are no specific acts, laws or regulations transposing the relevant EU directives and treaty provisions into Dutch law. See for invocation in national courts, above at Section 2.2.

Decision 95/553/EC has been published in the National ‘Tractatenblad’ and is part of the Dutch legal order.

2.4. National Law

There are no provisions in national Dutch law on diplomatic protection and/or consular assistance as such, except for legislation regulating consular fees and on the competences of consular officers.

Neither the constitution nor any other legislation provide for a right to assistance. The Dutch government considers that consular assistance often is a matter of tailored service and that for that reason it is impossible, and undesirable, to create ex ante legislation.

The only two national pieces of legislation are the [consular law of 1871](#) and the [consular decision](#) of 1982. The former document has largely been replaced by the Vienna Convention on Consular Relations. They both define the competences of Consuls and relate exclusively to their functions. No mention is made in either document of any rights of nationals or their position. **No right to consular assistance or diplomatic protection is recognized in the Dutch legal order.**

There is no soft law or anything like that (the Dutch legal order is a civil law system, which does not rely on soft instruments). **Individuals can sue the government for failure to provide assistance, but such cases have not (yet) been successful, since the courts (and the government) interpret consular assistance and diplomatic protection as a discretionary power of the executive which is non-justiciable, except that individuals have a legitimate expectation to be treated similarly to other individuals and that they also must be heard.** That means that a request for assistance must be taken seriously, but if the government considers that assistance is not appropriate or that it should offer a different kind of assistance than the kind requested, then that is within the discretion of government. In *M.K. v The Netherlands*⁵ of 18 March 2003, the applicant argued that the Dutch government had failed to meet its obligations under both the consular and diplomatic protection mechanism. The Court

⁵ *M. Kuijt v. The Netherlands*, 18 March 2003, LJN. no. AF5930, Rolno. KG 03/137

held that it has jurisdiction to review the case, it analysed whether the Government has taken the necessary measures and held that the claims were too farfetched and unsubstantiated so it dismissed them. However, the Dutch court assessed the actions of the Government, despite the recognised discretion of the Government in choosing the appropriate means of consular and concluded that *“it expects the [Dutch government] to continue to take an effort to assist the applicant and to take all possible measures to secure the release of the applicant as soon as possible”*⁶.

A complaint can also be lodged before the Ombudsman.

There is no substantial debate in parliament on this issue, except for the occasional questioning on what the government actually did to protect nationals abroad. These discussions usually require the minister of foreign affairs to provide information. MPs occasionally urge the minister to stay involved. It should be stressed that such discussions never hint at any obligation to assist or protect nationals abroad.

2.5. Documentation on practice on consular protection

The most important annual report is the Netherlands Yearbook of International Law, Asser Press, The Hague, published annually.

The Yearbook contains entries entitled ‘diplomatic protection’ (under State Responsibility) and ‘consuls and consulates’, including an entry on ‘protection of citizens’. Only when relevant materials have appeared during the year covered by the Yearbook will the Yearbook include the items. Recently, no items have been inserted.

2.6. Information to citizens on consular protection

General information on what the Dutch Embassy is willing to do (and what it will not do) is provided on the website of the Ministry⁷.

This website contains an exhaustive list of situations in which nationals may appeal to the consular officers for assistance. It stresses that, first, Dutch nationals are presumed to travel well-prepared and that they have their own responsibility to stay out of trouble. Second, it stresses that consular services may come at a fee and that Consulates and Embassies do not give away money to distressed individuals, even if they may mediate in financial situations. Finally, it stresses that Dutch nationals should always consult the country advice issued by the Ministry. Naturally, the information provided through the website of the Ministry is not legally binding and is only indicative of what to expect.

3. Fulfilment of Union obligations under Article 23 TFEU and statistical data on consular practice

3.1 Contractual framework

The Ministry does advise Dutch nationals of the possibility of turning to another EU Embassy when there is no Dutch Embassy,⁸ but this is not something that has been formally communicated with the affected third states.

With regard to agreements with third countries: **while Art. 23 TFEU is applicable to The Netherlands, no specific provisions or treaties have been adopted or concluded in this regard** (see above, [Section 2.1](#)). The Netherlands have also not informed third countries individually of the practice of extending protection to Union Citizens, nor do

⁶ *Ivi.*, para. 3.8. (Translation by the Author).

⁷ (www.minbuza.nl)

⁸ See: http://www.minbuza.nl/nl/Producten_en_Diensten/Calamiteiten

The Netherlands provide in such agreements for the protection of family members of Union citizens if such family members are not EU citizens. Protection for such family members is not normally provided, unless there is an overwhelming emergency (such as the Lebanon crisis in 2006 and the Tsunami). Third countries have also not been informed of such practice, at least not officially.

No formal negotiations have started establishing agreements concerning protection of EU citizens other than Dutch nationals, nor are there any agreements including provisions extending consular protection to Union citizens' family members who are not nationals of a Member State.

Negotiation on sharing the burden of protection with other EU Member States has started. See below, [Section 4.1](#).

3.2. Statistical data on consular practice

The only statistical data available are for 2006, 2007 and 2008. They do not cover all areas, but what is available has been reproduced below. Please note that these statistics are limited to consular assistance. Statistics on diplomatic protection are nonexistent. Names and data of individual cases are in any event hardly ever disclosed, for privacy and diplomacy reasons.

Type of Service	Amount		
	2006	2007	2008
Travel documents	145.097	167.368	158.352
General Assistance*	1.594	1.994	2.360
Visits to detainees (MoFA& partners)**	14.369	15.752	14.207
Child abduction (continuous)	30	42	48
Nationality Investigations (estimate)	1000	1.250	1.500
Persons evacuated	553	39	0
Requests for international assistance in legal matters and extradition	483	369	467

* This refers to financial mediation, assistance to victims of violent crimes, assistance in case of transportation of corpses, repatriation (including individuals in psychological distress), assistance in case of illness, injury, admission to hospitals and contacting necessary persons.

This is further specified in the following statistics:

Assistance in case of:	2006	2007	2008
injury and illness	604	345	376
death	437	425	490
death as result of violent crime	27	18	42
after violent crime	8	872	445
Status and disappearance	526	334	445

** The visits to detainees is carried out together with NGOs. Specific statistical information is as follows:

Visitor:	2006	2007	2008
Visits by Consular posts:	6.978	6.950	6.106
Visits by Reclasering Nederland	6.115	7.389	6.422
Visits by Epafra	1.276	1.413	1.679

4. Consular protection in detail

The relevant legal framework is the official publication of both the TFEU (Art. 23) and of Decision 95/553/EC. They have not been transposed to national law (this is not necessary under the Dutch monist system), but they have been officially published.

4.1 General

Consular assistance is available *ratione personae* to Dutch nationals, to first grade relatives of Dutch Nationals (spouses, parents and children, according to Dutch law), to other EU nationals pursuant to Art. 23 TFEU and, in a limited manner, to individuals with a residence permit in The Netherlands. This latter category would include refugees and stateless persons, as long as they reside lawfully and habitually in The Netherlands. Individuals with a residence permit in The Netherlands should first contact their State of nationality and The Netherlands will only provide consular assistance in a limited way.

There is no right to consular assistance under Dutch law and the consular services can decline a request for assistance (see above, [Section 2.4](#)). Similarly, there is no right to diplomatic protection.

The Netherlands have a vast system of representation all over the world. There are 110 Embassies, 27 professional Consulates, one Embassy office and two representations to non-states and (in 2006) 360 honorary consulates. For details on Dutch representation abroad and the most current information the website of the Ministry can be consulted⁹. Due to the sheer magnitude of representations, it is impossible to list them here. **Honorary consuls** will provide assistance to Dutch nationals abroad and may promote economic and other Dutch interests. They are, however, not allowed to do the following: issuance of passports and Schengen-visa. This is only allowed to professional consuls and Embassies

The Netherlands currently consider sharing consular services with Germany in Rabat and with France. Regarding the issuance of Schengen-visa, agreements have been made with Belgium and, to a lesser extent, France and Germany. **The Netherlands are the EU Lead State in Suriname, but this is currently limited to (pre-)emergency responses.**

The Dutch government is generally well-disposed towards co-operation in the context of the EU in consular affairs, in particular to the lead State concept. However, **since the Netherlands are very well represented in the world, there is no urgent need to co-operate at present, except for budgetary reasons.** This usually leads to the closure of smaller posts with a message to Dutch nationals to refer to an embassy of another EU Member State. In any event, even in absence of a Dutch mission, there often are honorary consuls present.

As a general remark, for all kinds of assistance presented in the following sections, **the Dutch government will only act on the premise that any costs will be paid (or if necessary refunded) by the national concerned.** The Foreign Office will not provide financial assistance itself, but can mediate in doing so, for instance by allowing relatives of the distressed national to transfer money to the Embassy or Consulate or by providing a bank-account.

⁹ www.minbuza.nl

4.2 Assistance in cases of death - Identifying and repatriating remains

In the aftermath of the earthquake in Haiti, the Dutch consular team was engaged in the identification and repatriation of corpses. In that case, 4 corpses of adults and 3 corpses of children were repatriated. One further corpse was found under a hotel and identified as a missing Dutch national. The corpse was subsequently repatriated. Efforts were made to find (the body of) another missing national.

4.3. Assistance in cases of serious accident or serious illness

No information is available on this item.

4.4. Assistance in cases of arrest or detention

The Dutch Consulates do not finance legal assistance but they will try to arrange such assistance. Detained nationals are visited in prison, the Consular officers may contact lawyers on behalf of the nationals and they often are present at the trials of nationals abroad. They also inform detained nationals of the procedures they may expect and will, if appropriate, try to organize for a transfer of the prisoner to The Netherlands (which will of course depend on the existence of an extradition/transfer treaty)

4.5. Assistance to victims of violent crime

A well-reported case in point might be the case of two Dutch children who were abducted to Syria by their Syrian father against the wishes of their Dutch mother in 2004. The children, aged 11 and 13, managed to flee to the Dutch Embassy in Damascus in August 2006. They stayed at the Embassy for several months, before being returned to the Netherlands. The Dutch officials conducted intense negotiations with their Syrian counterparts and (representatives of) the father of the children and the return of the children ultimately received the approval of both Syria and their father.

The Country Correspondent has also been informed that the Dutch government is attempting to assist white farmers in Zimbabwe with Dutch nationality whose farms were violently expropriated and other Dutch investors in that country. At least one of the farmers who lost their property went to Court and received a favourable judgment, which the Mugabe government has however failed to implement to date. Armed individuals are preventing the farmers and other investors from repossessing their properties.

4.6. Relief and repatriation of distressed citizens

See under the individual headings for various examples of repatriation.

4.6.1 Natural disasters

In response to the devastating earthquake in **Haiti**, the Dutch government sent a team of consular officers to the area within 48 hours (there is no Dutch Embassy on Haiti, only a honorary consul). This team assisted in the evacuation and repatriation of Dutch nationals on Haiti and the identification and repatriation of bodies. Although there was co-operation with the EU and other EU Member States, this co-operation did not pertain to consular services, but rather to humanitarian assistance. In the discussion in parliament on Haiti, no mention was made of assistance to other EU nationals.

Although no data are available, it is known that the Dutch Consulates did offer assistance in the aftermath of the **Tsunami** crisis in Asia to Union citizens.

4.6.2 Terrorist acts

It should be stressed that the general policy is not to negotiate with terrorists and not to pay ransom to hostage-takers. Money is sometimes provided, but always in the understanding that this is a loan and not a gift.

Although perhaps not really a terrorist act, the following case should be mentioned. Another caveat is in order: it is questionable to what extent this concerns consular assistance, but again, it may be mentioned. In August 2002 Mr. A. Erkel, a Dutch national was kidnapped by armed men in the Russian republic of Dagestan. He was an employee of *Medecins Sans Frontieres* (MSF). Apparently, the Dutch government paid a ransom of 1 mil. Euros, with the understanding that MSF would pay back half or more of this money. MSF refused to pay and this has resulted in legal proceedings in Switzerland (it was the Swiss MSF branch that had employed Mr. Erkel). The Dutch claim was rejected in the first instance and on appeal, but the Federal Court in Lausanne ultimately found in favour of the Dutch government and MSF was required to pay back part of the ransom forwarded on its behalf. It is curious to note that the claim involved only partial repayment. No information regarding the actual payment is available.

4.6.3 Pandemics

No information is available. Initially, it seemed the Swine Flu would have a pandemic effect, but this has not materialised and the Ministry has no special policy in this regard.

4.6.4 Military conflicts

Dutch consular officers assisted in evacuating distressed individuals in the **Lebanon crisis in 2006** and in **Georgia in 2009**. 553 individuals were evacuated from Lebanon and 39 from Georgia. The latter situation is particularly interesting since this involved co-operation with other EU Member States. Transportation was as follows: 2 Dutch nationals transported by the Polish Embassy to Jerevan; 4 Dutch nationals transported by the Italian Embassy to Rome; 19 Dutch nationals, 1 Slovak national and 4 Georgians transported by the Dutch Embassy to Jerevan and 14 Dutch nationals transported by the French Embassy to Paris

4.6.5 Financial advances

Financial advances are rarely given, and only if the national signs an official document promising to repay the financial advance. The Dutch Consulates interpret their functions rather as a mediator in financial affairs than as a provider of money. If money is provided, it is through charities, and not through the Dutch Ministry of Foreign Affairs. The Embassy or the Ministry may on occasion provide a bank account that relatives and/or charities may use to transfer money to the distressed national.

4.7 Consular fees

The consular fees as published by the Ministry are as follows. This list is based on the [Regulation on Consular Tariffs of 12 December 2003](#).

At present, there are no changes pursuant to any EU developments.

Service	Fee
Receipt or copy from civil registration	€ 30,-
Marriage	€ 433,-
Drafting of Notarial document	€ 265,-
Receipt or copy from Notarial documentation	€ 30,-
Acts of voluntary adjudication	€ 145,- per hour
Hearing or questioning of witnesses or expert in a civil case at the request of a judge	€ 145,- per hour
Drafting of a laissez-passer for a corps or a certificate for accompanying an urn	€ 60,-
Drafting of a consular statement regarding a person regarding facts related to that person as evidence	€ 30,-
Mediation in the solving of financial problems related to the sojourn abroad	€ 50,-
Issuance of advance loan ('Rijksvoorschot')	€ 50,-
Mediation in investigation into the status of a person	€ 120,- per hour
Mediation in the recuperation of an address	€ 52,50
Investigation into the recuperation of an address	€ 105,- per hour
Legalising a document by the Min. of Foreign Affairs	€ 10,-
Legalising a document at the Embassy or Consulate if the document is issued in the relevant district	€ 26,25
Mediation by the Ministry of Foreign Affairs in the legalisation of an original and additional document at the mission	€ 36,25
Mediation by the mission in obtaining a document	€ 103,-
Mediation by the Ministry of Foreign Affairs in the request for a document at the mission	€ 103,-
The above including legalisation	€ 131,-
Verification of a document or personal information by a consular officer	€ 52,50
The above by confidential counsellor	€ 222,50
Mediation in the verification of a document or personal information by a consular officer at the mission by the Ministry of Foreign Affairs	€ 78,-
The above by confidential counsellor	€ 248,-
Return visa	€ 40,-
Treatment of all other visa	€ 60,- (plus € 1,- per person for collective visa)
Extension travel visa max. 1 month	€ 25,-
Extension travel visa max. 3 months	€ 30,-
Extension of travel visa collective passport/list	€ 30,- (plus € 1,- per person)
Changes to a visa for one or multiple journeys	€ 35,- (plus € 1,- per person for a collective visa)
Mediation in the writing of an exam	€ 157,- per exam
Mediation in medical inquiry	€ 100,-

There is no specific information available for fees for freeing hostages. Generally, the government is not particularly keen on paying ransoms, but it has happened in the past,

although this was usually done on the basis of a loan and had to be paid back by the individuals or institutions concerned. See for a case under [terrorist acts above](#).

4.8 Case studies

Apart from the case studies referred to above in sections 4.2-4.6.4, there are to the knowledge of the Country Correspondent no problematic cases that stand out. Obviously, the consular services will encounter problems in the course of their duties, but these are not excessive.

In general, Dutch nationals abroad seem to be satisfied with the services provided, although some may always complain that it is insufficient. **Some nationals have challenged the State in court for the perceived lack of assistance (both regarding consular assistance and diplomatic protection). These cases, however, have all been decided in favour of the respondent, the Dutch State. The *Van Dam* case mentioned earlier is an example of this. The evidence produced in these decisions suggests that, on the consular level, the Dutch authorities actively assist nationals abroad.** With respect to diplomatic protection, the picture may be somewhat different, since the Netherlands – like most sovereign states – are hesitant to invoke the international responsibility of another State in the exercise of diplomatic protection.

It is to be expected that special problems arise in the context of assistance in case of arrest or detection, in particular in the context of the monitoring of trials. Access is not always provided, the times and dates of the procedures are not always correctly communicated to the relevant consulate and there sometimes are other impediments preventing the consular officer to attend the hearings, trials and convictions of nationals abroad. This applies in particular to states with a questionable judicial system.

5. Emergency travel document (ETD)

See above, [Section 3.2](#) for the total amount of travel documents issued. **No information on the number of emergency travel documents issued is available.**

One case was widely reported in the media: in 2004, emergency passports were provided to two Dutch nationals in Brazil who were suspected by the Brazilian authorities of producing and distributing child pornographic materials. They subsequently fled the country using the emergency documents and thereby avoided prosecution. This story was, of course, widely reported in local, national and international media.

The consulate will normally provide emergency travel documents as this squarely falls within its tasks.

6. Relevant diplomatic protection

General international law, as codified by the ILC in its draft articles on diplomatic protection, is applicable in the Netherlands. Provided local remedies have been exhausted and the claimant State can prove it is the State of nationality of the injured individual, the Netherlands will accept the claim from another State. **With respect to protection exercised by The Netherlands, there is no enforceable right on diplomatic protection, although the Dutch authorities will duly consider any request.**

The most recent case on diplomatic protection, stipulating that there is no duty is the [Van Dam case](#) (*Van Dam v. The Netherlands*, Civil Court (The Hague), 25 November 2004, Rolno.02/43, LJN: AR7484.¹⁰

7. Exercise of consular functions for expats

Under Dutch law, there is no requirement to register at a Dutch Embassy for Dutch Expats. There is, therefore, no special policy with respect to expats. They may rely on consular services just as any other national abroad. Obviously, there are certain legal implications for expats, but those are unrelated to consular services.

8. Summary

The legal framework consists of the official publications of international obligations, such as the Vienna Convention on Consular Relations and its sister on Diplomatic Relations, and two pieces of legislation which define the powers and functions of Consular officers. These however, do not stipulate when and under which conditions, assistance is rendered. **No official policy documents exist, apart from internal documents at the Ministry, which are not publicly available and in any event not something Dutch nationals can rely on.** The website of the Ministry does give an indication of the kind of assistance that will be rendered, but that assumes normal situations. It does not indicate the kind of assistance provided in cases of nationwide emergencies, natural disasters and other major calamities. **The information provided through the Ministry's website gives the impression that it is intended to warn Dutch nationals that the Dutch authorities will not give out money, cannot provide release from jail and assume that individuals travel wisely and well-prepared.** This, however, does not give a reliable impression of what the consulate will do in case of emergency. As the cases described above show, **the Dutch consular services are rather active and do provide all kinds of assistance, including in emergency situations such as the crises in East Asia (Tsunami), Lebanon, Georgia and Haiti.**

In practice, many Dutch nationals travel abroad and some require consular assistance. Such assistance is often granted, with two caveats: i) travelling is presumed to involve some risk and the Consulate will not attempt to cover for all risks. Individual nationals are presumed to travel well-prepared; ii) the Consulate will not provide financial assistance, unless the individual guarantees to refund the money provided. In addition, the assistance rendered to detained nationals, in particular when they are suspected of or convicted for crimes related to narcotics, is limited. **Despite a general attitude of offering assistance in a restricted manner, the Dutch Embassies and Consulates have shown to be more generous with assistance in case of emergencies during which the services provided sometimes were beyond what could normally be expected.**

The Netherlands are generally well-disposed towards co-operation in consular matters. At the same time, The Netherlands consider it important to represent and promote its own (economic) interests abroad and given its wide network of embassies, consulates and honorary consuls throughout the world, it is not (always) necessary to rely on this co-operation.

¹⁰ See for an analysis of these cases A.M.H. Vermeer-Künzli, 'Restricting Discretion: Judicial Review of Diplomatic Protection' *op cit.*

9. List of important documents

International treaties and related national instruments

1.

Title: Notawisseling tussen de Nederlandse en de Britse Regering houdende een overeenkomst betreffende douanefaciliteiten voor consulaire ambtenaren en lager diplomatiek personeel

Publication reference: Tractatenblad 1953-87, 1954-6

Data of validity:

English Title: Exchange of notes between NL and the UK containing an agreement concerning customs-facilities for consular officers and lower diplomatic personnel

French Title: Echange de notes entre les PB et Le Royaume-Uni contenant un agrément sur des facilités douanières pour le personnel consulaire et diplomatique de rang inférieur

Summary: Treaty containing regulation of customs privileges of consular officers and lower diplomatic personnel.

2.

Title: Briefwisseling tussen de Regering van het Koninkrijk der Nederlanden en de Regering van het Sultanaat Muscate en Oman inzake consulaire betrekkingen

Publication reference: Tractatenblad 1969-72

Data of validity: 25 August 1968

English Title: Exchange of notes between NL and the Sultanate of Muscate and Oman regarding consular relations

French Title: Echange de notes entre les PB et le Sultanat de Muscate et Oman concernant les relations consulaires

Summary: Document creating consular relations between NL and Muscate and Oman.

3.

Title: Notawisseling tussen het Koninkrijk der Nederlanden en de Republiek Suriname houdende een verdrag betreffende samenwerking inzake diplomatieke en consulaire faciliteiten

Publication reference: Tractatenblad 1995-100

Data of validity: 17 February 1993

English Title: Exchange of letters between NL and Surinam regarding a treaty on co-operation concerning diplomatic and consular facilities

French Title: Echange de notes sur un traité entre les PB et Surinam concernant la coopération dans les facilités diplomatiques et consulaires.

Summary: Exchange of notes on the drafting of a treaty on co-operation in the provision of diplomatic and consular facilities. This amounts primarily to the exchange of attachés, experts and the application of immunities to such persons. It also refers to the mutual representation of mutual interests through consular and diplomatic channels, including at international organisations.

4.

Title: Notawisseling tussen de Regering van het Koninkrijk der Nederlanden en de Regering van de Republiek Peru houdende een verdrag inzake betaalde arbeid ten behoeve van afhankelijke gezinsleden van het diplomatiek, consulaire, administratief, technisch en ondersteunend personeel van de diplomatieke en consulaire missies

Publication reference: Tractatenblad 2005-283, 2006-137

Data of validity: 22 juni 2006

English Title: Exchange of letters between NL and Peru regarding paid employment by dependent family members of diplomatic, consular, administrative, technical or supportive staff of missions

French Title: Echange de notes entre NL and Peru concernant l'emploi payé des membres dépendants de la famille du personnel diplomatique, consulaire, administratif, technique ou soutenant

Summary: Agreement on immunities and waivers related to the situation described in the title.

5.

Title: Notawisseling tussen de Nederlandse en de Hongaarse Regering houdende een verdrag inzake de tewerkstelling van gezinsleden van het diplomatieke en consulaire personeel

Publication reference: Tractatenblad 1995-131, 1995-302

Data of validity: 1 January 1996

English Title: Exchange of letters between NL and Hungary regarding employment of partners of diplomatic and consular personnel

French Title: Traité entre PB et l'Hongrie concernant l'emploi payé des membres de la famille du personnel diplomatique et consulaire.

Summary: As the above, but then between NL and Hungary

6.

Title: Briefwisseling tussen de Regering van het Koninkrijk der Nederlanden en de Regering van de Republiek Chili houdende een verdrag inzake de tewerkstelling van gezinsleden van het diplomatieke en consulaire personeel

Publication reference: Tractatenblad 1995-297, 1997-16

Data of validity: 1 February 1997

English Title: Exchange of letters between NL and Chile regarding employment of partners of diplomatic and consular personnel

French Title: Traité entre PB et Chile concernant l'emploi payé des membres de la famille du personnel diplomatique et consulaire.

Summary: As the above, but then between NL and Chile

7.

Title: Verdrag tussen het Koninkrijk der Nederlanden en Australië inzake betaald werk van gezinsleden van diplomatiek en consulaire personeel

Publication reference: Tractatenblad 1997-309, 1998-190

Data of validity: 13 August 1998

English Title: Treaty between NL and Australia regarding paid work of family members of diplomatic and consular personnel

French Title: Traité entre PB et l'Australie concernant l'emploi payé des membres de la famille du personnel diplomatique et consulaire.

Summary: As the above, but then between NL and Australia

8.

Title: Verdrag tussen het Koninkrijk der Nederlanden en de Republiek Kroatië inzake de tewerkstelling van partners van het diplomatieke en consulaire personeel

Publication reference: Tractatenblad 2005-174, 2005-246, 2007-74

Data of validity: 8 March 2007

English Title: Treaty between NL and Croatia regarding employment of partners of diplomatic and consular personnel

French Title: Traité entre PB et Croatie concernant l'emploi des partenaires du personnel diplomatique et consulaire.

Summary: As the above, but then between NL and Croatia

National legislation

9.

Title: Regeling van de Minister van Buitenlandse Zaken van 12 december 2003, nr. DJZ/BR-1003/2003 tot vaststelling van de tarieven voor consulaire dienstverlening (Regeling op de consulaire tarieven)

Publication reference: DJZ/BR-1003/2003

Data of validity: 1 January 2004

English Title: Regulation of Consular Tariffs

French Title: Règlement sur les tarifs consulaires

Summary: Regulation listing the Consular Tariffs.

10.

Title: WET van 25 juli 1871, houdende regeling van de bevoegdheid der consulaire ambtenaren tot het opmaken van burgerlijke akten, en van de consulaire regtsmagt

Publication reference: STB, 1993, 692

Data of validity: 3 augustus 1871

English Title: Consular Law

French Title: Loi consulaire

Summary: Consular legislation defining the functions of Consuls. Largely replaced by the VCCR.

11.

Title: Rijkswet Rijkswet goedkeuring en bekendmaking verdragen

Data of validity: 21 July 1994

English Title: National Law on the adoption and publication of Treaties

French Title: Loi Nationale sur l'adoption et publication des traités.

Summary: National legislation providing for the ways in which treaties and conventions must be published in the Dutch legal order

12.

Title: BESLUIT van 23 november 1981 tot vaststelling van een nieuw Consulair besluit

Publication reference: STB 1993, 300

Data of validity: 12 januari 1982

English Title: Consular Decision

French Title: Decret consulaire

Summary: Decision on Consular regulations, defining the functions and powers of Consular officers.

Case law

13.

Title: Van Dam case (*Van Dam v. The Netherlands*, Civil Court (The Hague),

Publication reference: Rolno.02/43, LJN: AR7484

Data of validity: 25 November 2004,

Summary: Court decision on the obligation to exercise diplomatic protection, in which the Court decided that although there was some duty to seriously consider a request for protection, there could be no obligation to this extent.



United Kingdom (UK)

(i) Article 23(1) TFEU

The United Kingdom has described the wording of the definition of Article 23(1) TFEU (ex Article 20 EC Treaty) and the interpretation of this definition by the European Commission in its Green Paper in 2006 and Action Plan in 2007 as ‘problematic’. **Consular assistance in the United Kingdom is based on policy and not legal right and the United Kingdom is not under a legal obligation to provide consular assistance.**¹

From the perspective of the United Kingdom, the wording of the definition of Article 23(1) raises several issues. The first is the Article’s interpretation of ‘consular assistance’. Consular assistance is wrongly referred to as ‘consular protection’. The United Kingdom does not extend consular protection to non-British nationals and has interpreted ‘protection’ to mean ‘assistance’ (discussed below).² Secondly, the Article does not make clear the critical distinction between ‘consular assistance’ and ‘diplomatic protection’, which is a distinct legal concept. Consular assistance is wrongly referred to as ‘diplomatic protection’. The United Kingdom does not and cannot extend diplomatic protection to non-British nationals (discussed below). The third issue, highlighted above, is that Article 23(1) TFEU professes consular assistance to be an ‘entitlement’. The United Kingdom does not accept that consular assistance is an ‘entitlement’. **Consular assistance is neither a ‘right’ nor an ‘entitlement’.**³ **The United Kingdom is not under a ‘legal obligation’ under domestic, European or international law to provide consular assistance (or to exercise diplomatic protection) to British nationals or non-British nationals (including EU citizens).**⁴

The wording of Article 23(1) TFEU, from the perspective of the United Kingdom, is insufficiently clear. This definition was first established by virtue of Article 8C of the Maastricht Treaty (1992) and was repeated in Article 20 EC Treaty and now is present in Article 23(1) TFEU. The point is that the wording has remained unchanged for almost two decades without being clarified. Yet, it would appear that the wording of Article 20 EC Treaty and, now, Article 23(1) TFEU has been one of the main sources of disagreement between Member States and, in particular, the United Kingdom and the European Commission. More importantly, from the perspective of EU citizens, the definition of consular assistance in Article 23(1) TFEU offers, at best, a distorted view of what level of consular assistance may be legitimately expected and, at worst, a potentially ‘misleading’ and ‘confusing’ state of affairs. Thus, it is not surprising that a significant proportion of EU citizens do not have a clear understanding of the meaning of Article

¹ Select Committee on European Scrutiny – Sixteenth Report, ‘Diplomatic and Consular Protection of Union Citizens in Third Countries’, session 2006-07, at para. 2.6, available online in the [CARE Database](#). In addition, **interview I (Alan Shaw, Head of Human Rights and Assistance Policy Team, Consular Directorate).**

² British nationals are individuals from the countries of England, Wales, Scotland and Northern Ireland.

³ Interview I.

⁴ Interview I. United Kingdom Government (2007). ‘UK response to the Commission’s Green Paper on Diplomatic and consular protection of Union citizens in third countries’, at para. 1.7, available in the [CARE Database](#).

23(1) TFEU. Accordingly, the wording of Article 23(1) TFEU needs to be clarified as appropriate. It is essential that unnecessary phrases such as ‘consular protection’ and ‘diplomatic protection’ and ‘entitled’, which have legal implications, should be avoided.

In addition to the wording of the definition of Article 23(1) TFEU, the United Kingdom has described the ‘broad’ interpretation of Article 23(1) TFEU (ex Article 20 EC treaty) by the European Commission in its Green Paper in 2006 and Action Plan 2007 as ‘problematic’. From the perspective of the United Kingdom, the interpretation of this Article raises several issues. The first issue is that it does not necessarily represent a ‘tangible’ expression of EU citizenship and impose an obligation on the United Kingdom to provide consular assistance to unrepresented EU citizens in third countries. The United Kingdom believes that Article 23(1) TFEU simply provides the **right of non-discrimination and equal treatment to unrepresented EU citizens in third countries**. Thus, unrepresented EU citizens in third countries have equal ‘access’ or ‘opportunity’ to consular assistance on the same basis as British nationals. Indeed, the United Kingdom has persistently stated that the obligation imposed on Member States by Article 23(1) TFEU is ‘to exercise their consular assistance policies in a non-discriminatory way as among EU citizens’.⁵ The United Kingdom believes that **this obligation requires Member States to consider requests for consular assistance by unrepresented EU citizens on the same basis as requests by their own nationals**.⁶ **‘Consideration’ is the operative word.** The United Kingdom has to only give consideration to provide consular assistance under the doctrine of legitimate expectation (discussed below). Thus, in the exercise of its discretion, the United Kingdom must consider extending consular assistance to unrepresented EU citizens in third countries in the same way that it would in relation to British nationals. The second issue is that **the right to non-discrimination and equal treatment does not require setting ‘minimum’ or ‘equal’ standards for consular assistance amongst Member States**.⁷ Thus, the United Kingdom has rejected harmonisation of consular policy.⁸ Consular assistance in the majority of Member States is based on policy and it would be difficult and impracticable to produce a ‘common’ consular policy.⁹ The third issue is that the United Kingdom does not believe that Article 23(1) TFEU creates a ‘legal right’ to consular assistance independent of domestic law.¹⁰ No right to consular assistance

⁵ Select Committee on European Scrutiny – Sixteenth Report, *op cit.*, *ibid*.

⁶ Italic added. United Kingdom Government (2007), *op cit* at para.1.8. Select Committee on European Scrutiny – Sixteenth Report, *ibid*. Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, ‘Diplomatic and Consular Protection’, session 2007-08, 23 June 2008, at col. 5, available in the [CARE Database](#).

⁷ Select Committee on European Scrutiny – Sixteenth Report, *ibid* at para. 2.12. Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *ibid* at col.6. Liam Byrne, Minister of State at the Home Office, Select Committee on European Scrutiny – Twenty-Third Report, ‘Citizenship of the European Union’, session 2007-08, at col. 20.5, available online in the [CARE Database](#). Select Committee on European Scrutiny – Twenty-Sixth Report, ‘Diplomatic and Consular Protection of Union Citizens in Third Countries’, session 2007-08, at col. 5.13, available online in the [CARE database](#).

⁸ Interview I. Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *ibid* at cols. 5, 6.

⁹ Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *ibid* at cols. 5, 6. For example, France, Germany, the Netherlands, Austria, Bulgaria and the Czech Republic, *ibid*. It is suggested that only a minority of Member States provide consular assistance on the basis of legal right, including Sweden and Finland, *ibid*.

¹⁰ Select Committee on European Scrutiny – Sixteenth Report, *cit.*, at para. 2.6. United Kingdom Government (2007), *op cit* at *ibid*. Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *ibid* at col. 6. Liam Byrne, Minister of State at the Home Office, Select Committee on European Scrutiny – Twenty-Third Report, *op cit* at col. 20.5.

exists in the United Kingdom. Thus, it would be contradictory to provide EU citizens with a ‘right’ to consular assistance.¹¹ Accordingly, the United Kingdom believes that Council Decisions 95/553/EC and 96/409/CFSP do not broaden the basic legal principle set out in Article 23(1) TFEU.¹²

(ii) Consular assistance under International Law

The United Kingdom is party to the Vienna Convention on Consular Relations 1963¹³ and its Optional Protocol on the compulsory Settlement of Disputes.¹⁴ The United Kingdom is not party to any other multilateral treaties on consular protection under regional and international law.

Treaties entered into by the United Kingdom generally require to be enacted into domestic law in order to have effect. Customary international law is treated as being part of domestic law unless it conflicts with a domestic statute or the decision of a higher court.

The Vienna Convention on Consular Relations 1963 has been incorporated into UK law by virtue of the Consular Relations Act 1968.¹⁵ In addition to giving effect to the 1963 Convention, the purpose of the Act is ‘to enable effect to be given to other agreements concerning consular relations and to make further provision with respect to consular relations between the United Kingdom and other countries and matters arising in connection therewith; to restrict the jurisdiction of courts with respect to certain matters concerning or arising on board certain ships or aircraft; to enable diplomatic agents and consular officers to administer oaths and do notarial acts in certain cases; and for purposes connected with those matters.’ The United Kingdom has concluded several bi-lateral treaties for consular assistance with other States.

In relation to European law, Article 23 TFEU and Decision 95/553/EC are directly applicable.

(iii) Vienna Convention on Consular Relations and the consent of the third countries

The United Kingdom is clear that Article 8 of the Vienna Convention on Consular Relations is adequate and satisfactory for the exercise of consular functions on behalf of unrepresented EU citizens in third countries.¹⁶ The United Kingdom understands the importance of obtaining the consent or acquiescence of the receiving State in providing consular assistance to EU citizens. In the practice and experience of the United Kingdom, however, this is not problematic and receiving States are generally content for assistance to be provided by other Member States.¹⁷ Thus, the United Kingdom has rejected the proposal by the European Commission that Member States negotiate a ‘consent clause’ in their existing bi-lateral agreements with third

¹¹ Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *ibid* at col. 8.

¹² United Kingdom Government (2007), *op cit* at *ibid*.

¹³ The United Kingdom signed the Convention on 27 March 1964 and ratified it on 9 May 1972.

¹⁴ The United Kingdom signed the Optional Protocol on 27 March 1964 and ratified it, alongside the Vienna Convention, on 9 May 1972.

¹⁵ C. 18.

¹⁶ United Kingdom Government (2007), *op cit* at col. 5. Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *op cit* at col.6. Article 8 of the Vienna Convention on Consular Relations provides consular assistance to be provided to non-nationals where the receiving State has been notified and been given an opportunity to object.

¹⁷ Select Committee on European Scrutiny – Twenty-Sixth Report, *cit.*, at col. 5.10.

countries in order to formalise the arrangements under Article 23(1) TFEU. Given the experience of the United Kingdom, the seeking of formal agreements would be a ‘major’ and ‘wholly unnecessary’ task.¹⁸ Of course, whether other Member States need to negotiate consent clauses with third countries is dependent upon their existing agreements and arrangements.¹⁹ In addition, the United Kingdom does not believe that the European Commission has the practical experience to deliver consular assistance. For this reason, the United Kingdom does not consider that it is necessary to negotiate consent clauses in its existing bi-lateral agreements with third countries for the provision of an ‘EU’ consular service (discussed below).

(iv) Diplomatic protection and ‘consular assistance’: a critical distinction

There is a critical distinction between diplomatic protection and consular assistance.²⁰ **Diplomatic protection** is a distinct legal concept.²¹ Diplomatic protection is a State-to-State process by which a State may bring a claim against another State in the name of a national who has suffered an internationally wrongful act at the hands of that other State.²² In exercising diplomatic protection, the State acts in its own right and is not simply acting as an agent on behalf of its nationals.

Indeed, ‘[a] State acts in its own right in exercising diplomatic protection. It acts not as an agent, but as the protector of the interests of its nationals while they are abroad. In so doing, it is also protecting certain of its own interests.’²³ Under international law, a State may only protect the interests of its own nationals through formal diplomatic means.²⁴ This is justified on the basis of the ‘link’ between the State and its nationals.²⁵ There is no obligation for a State to exercise diplomatic protection under domestic, regional or international law.²⁶ There is, in addition, a further distinction between ‘diplomatic protection’ and ‘diplomatic representation’. ‘**Diplomatic representation**’ is ‘not a legal term of art.’²⁷ It is a communication, an expression of disapproval, from one State to another and the communicating State cannot demand a response.²⁸ Diplomatic

¹⁸ Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *op cit* at *ibid*. Select Committee on European Scrutiny – Twenty-Sixth Report, *ibid*. United Kingdom Government (2007), *op cit* at col. 5.1.

¹⁹ Select Committee on European Scrutiny – Twenty-Sixth Report, *ibid*. United Kingdom Government (2007), *ibid*.

²⁰ For further discussion on this distinction, see Amerasinghe, F. C. (2008). Lowe, V (Ed.). ‘Diplomatic Protection’ Oxford: Oxford University Press, p. 45.

²¹ Amerasinghe, *ibid* at p. 21-36. United Kingdom Government (2007), *op cit* at para. 1.6.

²² United Kingdom Government (2007), *ibid*. Warbrick, C. (1988). ‘Protection of Nationals Abroad’. *International Comparative Law Quarterly*, vol. 37, at p. 1002.

²³ Leigh, F. I. G (1971). ‘Nationality and Diplomatic Protection’. *International Comparative Law Quarterly*, vol. 20, at p. 455. Warbrick, C. & McGoldrick, D. (2002). ‘Diplomatic Representations and Diplomatic Protection’. *International Comparative Law Quarterly*, vol. 51, at p. 726.

²⁴ *Case Concerning the Barcelona Traction Light and Power Company Limited (Belgium v Spain)*, *Second Phase Judgment*, I.C.J. Reports, 1970, p. 3, at p. 44. Warbrick, *op cit* at p. 1002.

²⁵ *The Nottebohm Case (Liechtenstein v Guatemala) Second Phase Judgment*, I.C.J. Reports 1955, p. 4, at p. 23.

²⁶ Thus, Dugard, the International Law Commission’s Special Rapporteur on Diplomatic Protection, in the first submission of his Draft Articles to the International Law Commission, conceded that the State, by virtue of Article 3, has *discretion* to exercise diplomatic protection over its nationals. By virtue of Article 4(2), ‘the State of Nationality is relieved from this obligation if: (a) the exercise of diplomatic protection would seriously endanger the overriding interests of the State and/or its people’. *Italic added*. Dugard, R. J. First Report on Diplomatic Protection, Fifty-Second Session of the International Law Commission, A/CN.4/506.

²⁷ Warbrick, & McGoldrick, *op cit* at p. 724.

²⁸ *Ibid*.

representation is also referred to as ‘consular protection’. Diplomatic representation can be seen in instances of prosecution and detention where, for example, a miscarriage of justice or fundamental violation of human rights has been demonstrated (discussed below). Diplomatic representation, like diplomatic protection, is exercised in exceptional cases and all other local remedies must first be exhausted.

The United Kingdom provides diplomatic protection (and diplomatic representation) as a matter of published policy and not on the basis of a legal right to such protection. Diplomatic protection is not extended to non-British nationals, including British residents, EU citizens, refugees and Stateless persons. It is rare for diplomatic protection to be extended to non-British nationals.²⁹ The United Kingdom can decide not to provide diplomatic protection to British nationals and its decisions can be judicially reviewed if necessary.³⁰ The United Kingdom may offer diplomatic protection to non-British nationals in extreme cases and if the individual is present on diplomatic premises.³¹ The United Kingdom would first explore all the other options available before diplomatic protection is provided.³² For example, the United Kingdom would first telephone the Embassy of a foreign national in the nearest country that it is located and get help to individuals that way.³³ If there is no time to telephone a foreign Embassy, and in extreme cases, the United Kingdom may provide diplomatic protection on the same basis as it does for British nationals.³⁴

It is very rare that the United Kingdom is challenged judicially if it exercises discretion not to provide diplomatic protection to British nationals and non-British nationals. The main legal challenge faced by the United Kingdom has been in relation to the extension of diplomatic protection to British nationals/residents that have been detained indefinitely in Guantanamo Bay, Cuba.³⁵ **The two leading cases are *R (on the application of Abbasi and another) v Secretary of State for Foreign and Commonwealth Affairs and another*,³⁶ and *R (on the application of Al-Rawi and others) v Secretary of State for Foreign and Commonwealth Affairs and another*.**³⁷

In *Abbasi*, the Court of Appeal (Civil Division) held that the United Kingdom was not under any duty to provide diplomatic or any other protection to a British national who was suffering or threatened with injury in a foreign State. A decision not to provide diplomatic protection to a British national is judicially reviewable under the doctrine of legitimate expectation, for example, if the decision is irrational. Beyond this, however, British Courts do not have jurisdiction to enter ‘forbidden areas’, which include the subject-matter of national security, international relations and foreign policy.³⁸ The Court observed the ‘very limited nature of expectation’ on the basis of published policy in the United Kingdom.³⁹ In fulfilling its policy obligations, according to its stated practice, the United Kingdom needs only to ‘consider’ making ‘diplomatic representations’ (i.e., not diplomatic protection) on behalf of a British national.⁴⁰ It may

²⁹ Interview I.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Interview II (Matt Woods, Head of Assistance Policy and Prisoners Section, Consular Directorate, Foreign and Commonwealth Office).

³⁶ [2002] EWCA Civ 1598, available in the [CARE Database](#).

³⁷ [2006] EWCA Civ 1279, available in the [CARE Database](#).

³⁸ *Abbasi*, *op cit* at para. 106

³⁹ *Ibid.*, at para. 99.

⁴⁰ *Ibid.*

not always be reasonable, however, to expect the Secretary of State to state the reasons for considering why it would be inappropriate to provide such representation.⁴¹

In *Al-Rawi and Others*, the Court of Appeal (Civil Division), reaffirming *Abbasi*, held that the United Kingdom is not legally obligated to provide non-British nationals (including British residents) with diplomatic protection or diplomatic representation, despite allegations of real risk of torture or inhuman and degrading treatment. Moreover, the decision by the United Kingdom not to make a diplomatic representation does not constitute unlawful discrimination contrary to the Race Relations Act 1976. Indeed, unlike British nationals, British residents are not entitled to diplomatic protection under domestic and international law. Accordingly, this is a legitimate basis of distinction for the purposes of the 1976 Act. In any case, by giving ‘consideration’ of whether to provide diplomatic representation, the United Kingdom fulfilled its obligation of what could be legitimately expected under the doctrine of ‘legitimate expectation’ on the basis of its published policy.

Consular assistance is the provision of assistance that is provided by consular officials to British nationals who are in difficulty overseas. In this respect, consular assistance is limited in nature and does not extend to formal ‘representation’ or ‘protection’. Consular assistance is wrongly referred to as ‘consular protection’ and ‘diplomatic protection’.⁴² The definition of Article 23(1) TFEU, for example, does not make clear the distinction between the concept of consular assistance and ‘consular protection’ and ‘diplomatic protection’. One of the reasons for this mistake, from the perspective of the United Kingdom, is because ‘consular assistance is often referred to as consular protection, or because it is frequently provided by staff who have both consular and diplomatic functions.’⁴³ The United Kingdom will not and cannot make formal diplomatic or consular representations on behalf of EU citizens, or formally protect their interests, in the territory of a third country. The list of services that are provided by the United Kingdom under its provision of consular assistance is illustrated by the list of activities under Article 5 of Council Decision 95/553/EC (discussed below).⁴⁴

Consular assistance is not an ‘entitlement’ or a ‘right’ but is a matter of policy and is exercised on the basis of administrative discretion.⁴⁵ Thus, **the United Kingdom is under no general obligation under domestic, European or international law to provide consular assistance (or to exercise diplomatic protection) to British nationals or non-British nationals.**⁴⁶ **Consular assistance is not extended to non-British nationals or any other categories of persons, including British residents, non-British family members of British nationals, EU citizens, refugees and Stateless persons.**⁴⁷ A British national is defined as the following: (i) a British citizen,

⁴¹ *Ibid*, at para. 105.

⁴² Interview I.

⁴³ United Kingdom Government (2007), *op cit* at para. 1.6.

⁴⁴ *Ibid* at para. 1.5.

⁴⁵ Interview I. This applies whether it is in relation to British nationals as well as non-British nationals, *ibid*.

⁴⁶ *Ibid*. United Kingdom Government (2007), *op cit* at para. 1.7.

⁴⁷ **This is because consular assistance functions on the basis of British nationality and not on the basis of resident status**, Interview I. Moreover, it does not matter how long a person has lived in the United Kingdom or what their connections are to the United Kingdom, ‘Support for British Nationals Abroad: A Guide’, available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/english>. This guide is available in the following languages: English, Bengali, Chinese, Gujarati, Punjabi and Welsh. [This guide is also available in English in the [CARE Database](#)]

(ii) a British Overseas Territories citizen,⁴⁸ (iii) a British overseas citizen,⁴⁹ (iv) a British national (overseas),⁵⁰ (v) a British subject,⁵¹ and (vi) a British protected person.⁵² One of the reasons why consular assistance is only provided to British nationals is, historically, because of the way that the service is funded by the British passport system.⁵³ **The only exception to this is in cases where a specific agreement exists between the United Kingdom and another country.**⁵⁴ The United Kingdom may extend consular assistance to Commonwealth nationals if they do not have consular or diplomatic representation in a third country.⁵⁵ In exceptional circumstances,⁵⁶ the United Kingdom will extend consular assistance to non-British nationals but will only do so if there is no local Embassy or Consular Post to provide representation and on the basis that it has received a written agreement from their Government.⁵⁷ This does mean that refugees and Stateless persons are less likely to receive consular assistance.

(v) ‘Consular assistance’ under Article 23(1) TFEU and other ‘consular services’: a crucial distinction

In the United Kingdom there is a critical distinction between ‘consular assistance’ under Article 23(1) TFEU and the services of passport issuance, notarial services and visa applications.⁵⁸ Thus, **the United Kingdom believes that consular assistance, with which Article 23(1) TFEU and the European Commission’s Green Paper and Action Plan are concerned, must be distinguished from the provision of visa, passport and notarial services.**⁵⁹ Accordingly, the United Kingdom has stated that ‘Member States are under no obligation to provide these services to unrepresented nationals on a non-discriminatory basis.’⁶⁰ **Thus, consular assistance under Article 23(1) TFEU is limited to the list of services under Article 5 of Decision 95/553/EC and does not include other consular services (with the exception of crisis situations).** This includes provision for assistance in cases of arrest and detention, accident or serious illness, acts of violence, death and repatriation, and financial

⁴⁸ The United Kingdom provides the same assistance to British Overseas Territory citizens living or travelling Overseas Territory as any other British national, ‘Support for British Nationals Abroad: A Guide’, *ibid*.

⁴⁹ British nationality is gained through a connection with a former British territory that has since become independent, *ibid*.

⁵⁰ The United Kingdom cannot provide consular assistance to British nationals (overseas) of Chinese ethnic origin in China, Hong Kong and the Macao Special Administrative Regions because they are considered by the Chinese authorities as Chinese nationals, *ibid*. The United Kingdom will provide consular assistance to these individuals on the same basis as British nationals if they are travelling outside of China, Hong Kong and the Macao Special Administrative Regions, *ibid*.

⁵¹ British subjects fall into two categories: first, individuals that are British through a connection with Ireland when it was part of the United Kingdom prior to 1949 and, second, people who have a connection with the former British India, *ibid*.

⁵² British nationality is gained through a connection with a former British Protectorate, Protected State or Trust Territory, *ibid*.

⁵³ Interview I.

⁵⁴ **For example, bi-lateral consular assistance treaties or Article 23(1) TFEU**, *ibid*.

⁵⁵ ‘Support for British Nationals Abroad: A Guide’, *op cit*.

⁵⁶ ‘Exceptional circumstances’ does mean that all other potential avenues must first be exhausted before consular assistance is provided by the United Kingdom, *ibid*.

⁵⁷ Interview I.

⁵⁸ The United Kingdom Government (2007), *op cit* at para. 1.5.

⁵⁹ *Ibid* at para. 4.3.

⁶⁰ *Ibid*.

advances for citizens in difficulty. Thus, the degree of consular assistance that is potentially available to EU citizens is limited in nature.

(vi) Consular assistance for dual nationals

British nationals who have a second nationality are referred to as ‘dual nationals’ and consular assistance is extended to them by the United Kingdom in certain circumstances.⁶¹

For example, if a British dual national is travelling on his/her non-British passport then it is less likely that consular assistance will be provided and the individual will be directed to that State’s Embassy, High Commission or Consulate.⁶² **Indeed, as a matter of policy, the United Kingdom expects British dual nationals to travel on their British passport if formal consular assistance is expected to be provided by the United Kingdom.**⁶³

The vital issue is the nationality ‘link’ between the individual and the United Kingdom.⁶⁴ Consular assistance may be extended by the United Kingdom to dual nationals in extreme circumstances, for example, if there is a special humanitarian reason, and only after all other routes have been exhausted and an agreement has been received from the other State of nationality.⁶⁵ A humanitarian reason includes cases involving minors, forced marriages and the death penalty.⁶⁶

British nationality or British citizenship does not necessarily cause an individual to lose their nationality of another State.

Indeed, a British national may have the nationality of a second country if there is some ‘link’ with the country in question; for example, by birth, by descent through a parent, by marriage or by residence.⁶⁷ This is important because, for example, a British dual national travelling overseas on the passport of their second nationality may be liable for any obligations imposed by the Government of their second nationality; the fact that the individual is also a British national does not provide exemption and the United Kingdom will not and cannot intervene.⁶⁸ It is the responsibility of the individual and the Government of second nationality, and not the responsibility of the United Kingdom, to determine whether they hold the nationality of their country.

In providing consular assistance to British dual nationals, the United Kingdom does not draw a sharp distinction between different categories of British nationals: for example, British citizens, British Nationals (Overseas), British Dependent Territories Citizens, British Overseas Citizens and British Protected Persons. The United Kingdom does, however, draw a distinction between British nationals and British residents. A foreign national who is resident in the United Kingdom for a long period does not necessarily acquire British nationality. The extent of the problem of providing consular assistance to British residents is not clear because the United Kingdom does not publish or make publicly available statistical data in respect of this issue.

⁶¹ *Ibid.*

⁶² *Ibid.* The policy of the United Kingdom in relation to dual nationality is available in ‘Support for British Nationals Abroad: A Guide’, *op cit.* In addition, this policy is summarised in the British Yearbook of International Law, Crawford, J. & Lowe, V. (Eds.) (1999). ‘The British Yearbook of International Law’. Seventieth Year of Issue, Volume 70, Oxford: Clarendon Press, p. 531-532.

⁶³ Crawford & Lowe, *ibid* at p. 532.

⁶⁴ Interview I.

⁶⁵ Interview I. Additional information on United Kingdom policy is available in ‘Support for British Nationals Abroad: A Guide’, *op cit.*

⁶⁶ ‘Support for British Nationals Abroad: A Guide’, *ibid.*

⁶⁷ *Ibid.*

⁶⁸ Crawford & Lowe, *op cit* at *ibid.*

(vii) Statistical data on consular assistance

The United Kingdom does not make available statistical data of diplomatic protection. **The United Kingdom does publish figures for ‘Consular Assistance Enquiries’ and details the ‘Serious Cases’ that are actually responded to in a particular financial year.**⁶⁹ Published figures are only available for the last two financial years (2007/08 and 2008/09) and are **representative of consular assistance provided only to British nationals.** The publication of statistical data on consular assistance was the result of a ‘major’ review of the Foreign and Commonwealth Office undertaken by the National Audit Office in 2006. There are, however, published figures for ‘Passports Issued’ over the last five years.⁷⁰ Since the financial year 2007/08, statistical data has been published in the Consular Services Annual Report. The Annual Reports provide factual and Ministerial statements of the consular activity of the United Kingdom.⁷¹ The method currently used by the United Kingdom for collecting statistical data on consular assistance is to retrieve data directly from the consular assistance database.⁷² This method of data collection is more timely and consistent.⁷³

The figures for Consular Assistance Enquiries provide a general overview and are not broken-down into specific categories:

Statistical data for consular assistance provided by the United Kingdom to British nationals for the financial year 2007/08 is contained in Consular Services Annual Report 2007/08.⁷⁴ In this year there were 2,1 million consular assistance enquiries.⁷⁵ The number of ‘serious consular cases’ responded to by the United Kingdom was 34.874. The following Consular Posts accounted for approximately one third of all serious assistance cases around the world: Spain, United States of America, France, Greece, Thailand, Germany, Australia, Cyprus, Italy and Portugal.

The United Kingdom does not issue emergency travel documents (ETDs) as a matter of legal right but may do so as a matter of policy. The United Kingdom only has figures publicly viewable for the issue of ETDs for the financial year 2007/08.⁷⁶

Statistical data for consular assistance provided by the United Kingdom for British nationals for the financial year 2008/09 is contained in the Consular Services Annual Report 2008/09.⁷⁷ In the financial year 2008/09 there were approximately 2.1 million consular assistance enquiries.⁷⁸ The number of ‘serious consular cases’ responded to by the United Kingdom for the financial year 2008/09 was 34.443. The following Consular Posts accounted for approximately two thirds of all serious assistance cases around the world: Spain, United States of America, Portugal, France, Thailand, Greece, Germany, United Arab Emirates and Turkey.

⁶⁹ ‘Serious Cases’ are cases where actual consular assistance has been provided. The statistical data for Serious Cases is discussed below.

⁷⁰ Passports issued for the past five financial years in ascending order: 2004/05 450.000; 2005/06 450,000; 2006/07 420.000; 2007/08 360.000; 2008/09 372.106, Consular Services Annual Report 2008/09, available online in the [CARE Database](#).

⁷¹ However, the Annual Reports provide only a general overview and are limited in statistical analysis.

⁷² Interview II. This database is not publicly available, *ibid*.

⁷³ Interview II.

⁷⁴ This report is not available electronically.

⁷⁵ Consular Services Annual Report 2008/09, *op cit*.

⁷⁶ **11.000 emergency passports were issued. It is not publicly stated, however, whether this figure is for British nationals or for non-British nationals or both categories.** See Consular Services Annual Report 2008/09, *ibid*.

⁷⁷ *Ibid*.

⁷⁸ Interview I.

The figures for the financial year 2009/10 are currently unavailable.

The United Kingdom does not collect and collate or publish statistical data on consular assistance provided to EU citizens (or other non-British nationals). It is not clear, therefore, how many EU citizens the United Kingdom has assisted on an annual basis, the type of assistance that it has provided and in which third countries that assistance was provided. Moreover, the annual expenditure of providing consular assistance to EU citizens in third countries is not clear.⁷⁹ Apart from the additional resource allocation that it would take to collect and collate statistical data on these issues,⁸⁰ it would appear that the United Kingdom has refrained from publishing this data because of national sensitivity. Indeed, the United Kingdom is reluctant to inform its own nationals of the financial cost of assisting EU citizens, in particular, because consular assistance is funded by British passport fees. But it would appear that the UK, like other Member States, prefers to keep statistical data confidential in order to prevent potential comparisons between itself and other Member States from being undertaken. **Similarly, the United Kingdom does not publish statistical data for consular assistance provided to British nationals by other Member States' Embassies in third countries**

Although the United Kingdom does not make publicly available statistical data on consular assistance provided to unrepresented EU citizens in third countries, a general and limited overview has been alluded to during debates by the Select Committee on Foreign Affairs and the European Standing Committee. For example, in 2007 the Select Committee on Foreign Affairs in its assessment of the impact of providing consular assistance to EU citizens in third countries observed that in the financial year 2005-06 the UK assisted 120 'serious cases' in which consular assistance was provided to unrepresented EU citizens in third countries.⁸¹ **In 2008, the European Standing Committee observed that in the financial year 2006-07, the UK assisted 98 'serious cases' in which consular assistance was provided to unrepresented EU citizens in third countries.**⁸² There are no publicly available figures available for subsequent years. The Foreign and Commonwealth Office has stated that these figures do not represent a significant drain on consular resources but that it will continue to monitor trends closely and take action as necessary if the demand for its services rise, in particular, because of the rising number of EU citizens travelling overseas.⁸³

It is not clear, however, what categories of consular assistance was provided to EU citizens and in what countries. In addition, it is not clear whether particular Member States are assisting EU citizens more than others, or from which Member States EU citizens have most required consular assistance from the United Kingdom. Overall, there appears to be a lack of transparency on these issues which prevents objective analysis. Thus, it is not possible to ascertain whether there is a 'problem' with the current practice of consular assistance provided by Member States to unrepresented EU

⁷⁹ Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *op cit* at col. 11.

⁸⁰ For example the United Kingdom has nearly 200 Consular Posts globally, *ibid* at col. 23.

⁸¹ *Ibid* at col. 11.

⁸² Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *ibid* at col. 5. In the same period, there was 34,874 'serious cases' of consular assistance provided to British nationals, *ibid*.

⁸³ Select Committee on Foreign Affairs – First Report, *op cit* at *ibid*. In addition, see Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *ibid* at col. 6.

citizens in third countries and whether a ‘solution’ is necessary.⁸⁴ Thus, it would appear that a potential role for the European Commission is to assist with the administrative burden of Member States and to monitor the consular assistance that it provided by Member States to EU citizens in third countries. This would allow the European Commission to keep a central record of the number of cases and analyse trends and identify potential problems. It would also allow the European Commission to examine the annual expenditure of the consular assistance that is provided to EU citizens in third countries. Of course, this information does not have to be publicly viewable if Member States are sensitive about this issue. A further issue that appears to have been raised is the way that statistical data on consular assistance is collected and collated. The United Kingdom has, in recent years, changed the way that it collects and categorises statistical data; therefore, comparison with previous years is statistically invalid.⁸⁵ The European Commission must take this issue into consideration if it intends to undertake a comparison of the consular practice of Member States, which would otherwise be statistically invalid.

(viii) A summary of the most important policy documents of United Kingdom on consular assistance

With the exception of bi-lateral and multi-lateral agreements under international law, consular assistance in the United Kingdom is based on published policy and not on legal right. This means that the United Kingdom has the administrative discretion to amend its policy as and when it is required to do so and its policies may be judicially reviewed if necessary.⁸⁶ The provision of consular assistance operates under the doctrine of ‘**legitimate expectation**’. For analysis of the concept of legitimate expectation, see the [decision of the House of Lords in *Council of Civil Service Unions and others v Minister for the Civil Service* \[1984\] 3 All ER 935.](#)

This case established that under the doctrine of legitimate expectation, the controlling factor in considering whether a particular exercise of prerogative power is susceptible to judicial review is not its source but its subject-matter and the suitability of the issues that have to be determined. Thus, British courts do not normally have jurisdiction to judicially review the consular policies of the Foreign and Commonwealth Office if the subject-matter of those policies involve national security, foreign policy and foreign relations. On the basis of published policy, the level of expectation by British nationals is limited in nature. British nationals cannot ‘legitimately expect’ to receive consular assistance (or diplomatic protection) as a ‘right’ or ‘entitlement’. The United Kingdom only has to give ‘consideration’ to providing consular assistance (or exercising diplomatic protection), but it is under no duty or obligation to do so.⁸⁷ Accordingly, it would be highly contradictory to provide consular assistance as a ‘right’ or ‘entitlement’ to EU citizens under Article 23(1) TFEU. The United Kingdom has the discretion to

⁸⁴ This was observed by Sir Jim Murphy, European Minister at the Foreign and Commonwealth Office, when he stated that ‘[i]n putting forward its proposals, [the European Commission] has not identified in a coherent way the problem that it feels needs to be resolved.’ European Standing Committee, *ibid* at col. 22.

⁸⁵ Interview II.

⁸⁶ *Ibid*.

⁸⁷ For example, see *R (Suresh and Manickavasogam) v Secretary of State for the Home Department* [2001] EWHC 1028 (Admin) (unreported); *R v Secretary of State for the Home Department ex parte Kamalposphany* (2001) at para. 19 (unreported); *Al-Rawi, ibid*.

exercise consular assistance to British and non-British nationals (including EU citizens) on a case-by-case basis.⁸⁸

The United Kingdom is very rarely challenged legally for its consular services.⁸⁹

The most recent published policy on consular assistance is entitled ‘[Support for British Nationals Abroad: A Guide](#)’.⁹⁰ This guide provides factual statements of what consular assistance can and cannot be provided by the United Kingdom and to whom.

As the title indicates, consular assistance is provided to British nationals travelling and living overseas.⁹¹ The guide has been described as being ‘integral’ to the delivery of the United Kingdom’s diplomatic and consular priorities to British nationals.⁹² The guide is significant because it is based on a review of the whole policy of the United Kingdom’s consular assistance and diplomatic protection.⁹³ In particular, this guide provides Ministerial statements of what consular assistance is provided by the United Kingdom in crises, including terrorist acts, military conflict, natural disasters, civil unrest and pandemics.

There are several additional official publications that provide Ministerial statements on consular assistance in a number of other policy areas which include the following:

- ‘Support for British Nationals Abroad’,
- ‘Death Overseas’,⁹⁴
- ‘Guide for Bereaved Families’,⁹⁵
- ‘In Prison Abroad’,⁹⁶
- ‘Rape and Sexual Assault Overseas’,⁹⁷
- ‘Missing Persons Abroad’,⁹⁸
- ‘Transfer Home for Prisoners Abroad’,⁹⁹
- ‘Victims of Crime Abroad’,¹⁰⁰

⁸⁸ Interview I.

⁸⁹ Interview II.

⁹⁰ ‘Support for British Nationals Abroad: A Guide’, *op cit*.

⁹¹ The exceptions to this policy are that consular assistance may be provided to non-British nationals if there is a bi-lateral agreement on consular assistance between the United Kingdom and second country in place or, for example, in time of crisis, the United Kingdom may provide consular assistance to unrepresented EU citizens on the basis of Article 23 TFEU.

⁹² Geoff Hoon, Minister for Europe, European Standing Committee, ‘Diplomatic and Consular Protection of Citizens in Third Countries’, session 2006-07, 15 May 2007, at col. 3, available online in the [CARE Database](#).

⁹³ Baroness Scotland of Asthal, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, HC Deb., vol. 341, col. 253W: 16 December 1999.

⁹⁴ ‘Death Overseas’, available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/death-overseas>. This guide is available in English.

⁹⁵ ‘Guide for Bereaved Families’, available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/bereaved-families>. This guide is available in English.

⁹⁶ ‘In Prison Abroad’, available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/in-prison-abroad>. This guide is available in English.

⁹⁷ ‘Rape and Sexual Assault Overseas’, available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/rape-and-sexual-assault-overseas>. This guide is available in English.

⁹⁸ ‘Missing Persons Abroad’, available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/missing-persons-abroad>. This guide is available in English.

⁹⁹ ‘Transfer Home for Prisoners Abroad’, available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/transfers-home>. This guide is available in English.

¹⁰⁰ ‘Victims of Crime Abroad’, available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/victims-of-crime-abroad>. This guide is available in English.

- ‘Travel Safe’¹⁰¹ and
- ‘World Wise’.¹⁰²

Other official published guidance on consular assistance for British nationals travelling and living overseas includes:

- ‘Checklist for Travellers’,¹⁰³
- ‘Disabled Travellers’¹⁰⁴ and
- ‘Going to Live Abroad’.¹⁰⁵

The Foreign and Commonwealth Office Web Site also provides more general information on consular assistance in relation to ‘Travelling and Living Overseas’ online.¹⁰⁶

One of the most important aspects of consular assistance, from the perspective of the United Kingdom, is preventative action, that is, the prevention of the need to provide consular assistance by keeping British nationals informed of conditions overseas. This ranges from the providing of guidance to British nationals to take certain precautionary measures before they travel overseas, to the offering of highly responsive travel advice and, in particular, the warning of the potential risks and dangers of travelling to particular countries. **The United Kingdom will also advise British nationals not to travel to certain countries if to do so would be too dangerous. Thus, as a matter of United Kingdom policy, British nationals that travel to a particular country contrary to such advice may not be able to receive consular assistance if it is required.** Thus, it may be problematic for the United Kingdom to provide consular assistance to EU citizens in third countries if they have travelled to a country that is contrary to the advice of the United Kingdom. Of course, the advice that is provided to British nationals may not be relevant to non-British nationals (these issues do, however, need to be taken into consideration if the European Commission establishes a European Consular Web Site). In the United Kingdom, the Foreign and Commonwealth Office produce its own travel information that covers 219 states and territories around the world.¹⁰⁷ In addition, it relies upon the travel information from twelve other States’ and territories.¹⁰⁸ The United Kingdom also follows the travel information of other Member States in responding to changing circumstances.¹⁰⁹ The Foreign and Commonwealth Web Site provides one of the most efficient and effective ways of providing timely and accurate ‘travel advice’ and ‘travel alerts’ to British nationals who are planning to travel overseas.¹¹⁰ The Web Site also provides links to

¹⁰¹ ‘Travel Safe’, available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/travel-safe>. This guide is available in English.

¹⁰² ‘World Wise’, available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/world-wise>. This guide is available in English.

¹⁰³ ‘Checklist for Travellers’, available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/checklist-for-travellers>. This guide is available in English.

¹⁰⁴ ‘Disabled Travellers’, available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/disabled-travellers>. This guide is available in English.

¹⁰⁵ ‘Going to Live Abroad’, available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/going-to-live-abroad>. This guide is available in English.

¹⁰⁶ ‘Traveling and Living Overseas’, available online: <http://www.fco.gov.uk/en/travel-and-living-abroad/publications>.

¹⁰⁷ The United Kingdom Government (2007), *op cit* at para. 2.6.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ For example, in the financial year 2008/09, the Foreign and Commonwealth Web Site received more than 6.000.000 hits.

French, German and Dutch travel information. In addition, the Foreign and Commonwealth Office run an annual ‘Know Before You Go’ campaign to inform British nationals of how to travel safely overseas.¹¹¹

The United Kingdom is in agreement with the European Commission for the establishment of an ‘EU’ Web Site for EU citizens but only on the basis that it provides links to the Web Sites of Member States and that it does not provide ‘common’ travel advice.¹¹² This is because travel advice at the EU level would not be effective and it could cause unnecessary duplication of the expertise of Member States.¹¹³ Thus, a potential European Commission Web Site must facilitate and not replace the Web Sites of Member States and assist in keeping Member States informed of each other’s travel information and knowledge. This is because Member States provide specific and accurate advice for the protection of their own nationals of how to mitigate risks and dangers that may not be common amongst all 27 Member States. This relies on ‘flexible’ and ‘responsive’ updates.¹¹⁴ Indeed, the United Kingdom has amended its travel advice within one hour of the information becoming necessary.¹¹⁵ Reaching agreement amongst all Member States on common travel advice will inhibit the ability of the United Kingdom, and other Member States, to respond to fast moving global and regional events.¹¹⁶ Moreover, travel advice raises political, intelligence and security issues which are not best discussed in a ‘common’ consular forum.¹¹⁷ In addition, the Web Sites of Member States provide a method of direct accountability to their own nationals.¹¹⁸

(ix) The most important documentation on consular practice in the United Kingdom

A compilation of British State practice in international law is published annually in the *British Yearbook of International Law*.¹¹⁹ The British Yearbook of International Law 1999¹²⁰ contains a summary of the most recent practice of the United Kingdom in respect of diplomatic protection.¹²¹ Under the heading ‘Diplomatic Protection: United Kingdom Practice’, it explains that diplomatic protection is an area ‘falling within the prerogative of the Crown’ and that ‘there is no general legislation or case law governing this area of domestic law’. In addition, the British Yearbook of International Law 1999 provides a summary of the policy of the United Kingdom in respect of consular assistance that is contained in ‘Support for British Nationals Abroad: A Guide’. It lists ten instances in which British nationals who are in difficulties overseas **may expect consular services** from the United Kingdom:¹²²

1. issue emergency passports;
2. contact relatives and friends and ask them to help you with money or tickets;
3. tell you how to transfer money;

¹¹¹ The ‘Know Before You Go Campaign’ is available online: <http://www.fco.gov.uk/en/travelling-and-living-overseas/about-kbyg-campaign/>. In addition, see ‘Support for British Nationals Abroad: A Guide’, *op cit*.

¹¹² Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *op cit* at col. 6.

¹¹³ *Ibid.*

¹¹⁴ The United Kingdom Government (2007), *op cit* at para. 2.9.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid* at para. 2.11.

¹¹⁹ See <http://ukcatalogue.oup.com/category/academic/series/law/byil.do>.

¹²⁰ Crawford & Lowe, *supra* n 68.

¹²¹ *Ibid* at p. 526.

¹²² *Ibid* at p. 530-531. This list is verbatim.

4. in an emergency, cash you a sterling cheque worth up to £100 if supported by a valid banker's card;
5. as a last resort, and as long as you can meet certain strict rules, give you a loan to get back to the UK. This loan must be repaid. But there is no law that says it we must do this. We must be sure there is no one else who can help you;
6. help you get back in touch with local lawyers, interpreters and doctors;
7. arrange for next of kin to be told of an accident or a death and advise on procedures;
8. visit you if you have been arrested or put in prison. In certain circumstances we can arrange for messages to be sent to relatives or friends;
9. give guidance on organisations who help trace missing persons; and
10. speak to the local authorities for you, in certain circumstances.

The standard of service that can be expected by British nationals is the same standard under the Citizen's Charter.¹²³ British nationals have to pay a fee for some of these services.¹²⁴ In addition, ten instances in which British nationals who are in difficulties overseas **may not expect consular assistance** are also listed:¹²⁵

1. intervene in court cases;
2. get you out of prison;
3. give legal advice or start court proceedings for you;
4. get you better treatment in hospital or prison than is given to local nationals;
5. investigate a crime;
6. pay your hotel, legal, medical or any other bills;
7. pay your travel costs, except in exceptional circumstances;
8. do work not normally done by travel agents, airlines, banks or monitoring organizations;
9. get you somewhere to live, a job or work permit; and
10. formally help you if you are a dual national in the country of your second nationality.

(x) Consular assistance provided by the United Kingdom to EU citizens in third countries

The United Kingdom does provide consular assistance to unrepresented EU citizens in third countries but it does so only on the basis that two conditions have been satisfied: first, the case must be exceptional and, second, the individual seeking consular assistance must not be represented by their own State.¹²⁶ **An 'unrepresented' EU citizen must not have an Embassy or Consular Post, or an Honorary Consul, in the territory of the third country to represent them.** The United Kingdom does extend consular assistance to EU citizens in crisis situations (discussed below). **If and when the United Kingdom does extend consular assistance to EU citizens, it normally does this on the basis that it has received written agreement from their**

¹²³ *Ibid* at p. 531.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.* This list is verbatim.

¹²⁶ Interview I.

Government.¹²⁷ In addition, the United Kingdom will normally extend consular assistance to EU citizens only on the basis that the financial costs incurred will be reimbursed by their Government. It is then the responsibility of the foreign Government to claim back the money from their own national (this also provides a mechanism for the prevention of ‘Consular Shopping’, discussed below).

In cases of the relief and repatriation of distressed EU citizens, the United Kingdom *may* provide relief and repatriation to distressed citizens of the EU.¹²⁸

The same conditions outlined above, however, must first be satisfied before the United Kingdom will consider doing so. **There are no published or publicly available documents of the United Kingdom experiencing problems of providing consular assistance to EU citizens in distress. It would appear, however, that this is not normally problematic.** Thus, Sir John Murphy, Minister for Europe at the Foreign and Commonwealth Office, has stated that:

*“I am not aware of any occasions where in practice such objections have been raised, either in relation to representation by one EU Member State of citizens of another, or in relation to other similar arrangements such as the long-standing informal arrangement whereby British missions provide consular assistance to unrepresented Commonwealth nationals, or the arrangements for mutual assistance between Scandinavian countries.”*¹²⁹

The existing bi-lateral agreements between the United Kingdom and third countries do not deal directly with the provision of consular assistance for EU citizens working and living in those third countries. By virtue of Article 8 of the Vienna Convention of Consular Relations, the United Kingdom must notify third countries if it considers it necessary to provide consular assistance to unrepresented EU citizens. However, this has not been undertaken ‘formally’; rather, the United Kingdom establishes ‘informal’ agreements with third countries as and when it exercises its discretion to provide consular assistance to EU citizens. This is because the United Kingdom provides consular assistance to EU citizens only in exceptional circumstances rather than on a day-to-day basis. **Given that the United Kingdom does not normally experience problems, the United Kingdom does not intend to start negotiations with third countries to provide consular assistance to EU citizens.**

The United Kingdom has never been challenged legally on the ground of Article 20 EC Treaty [now Article 23(1) TFEU] by an EU citizen.¹³⁰

As a matter of published policy and practice, consular assistance is provided to British nationals living in the United Kingdom and overseas. **Thus, the United Kingdom does not extend, and does not intend to extend, consular assistance to non-British nationals, including the non-EU family members of British nationals.**¹³¹ Indeed, consular assistance operates on the basis of nationality. British national passport holders make more than 65 million trips annually and 13.6 million British passport holders are resident overseas. A potentially significant proportion of these combined figures are related to third country nationals. Consular assistance in the United Kingdom is funded by a premium on British passports. Thus, ‘extending consular assistance to third country

¹²⁷ Interview I. The United Kingdom will normally call the EU national’s Government by telephone to inform them that one of their own nationals is in distress or in need of assistance and request written confirmation before consular assistance is actually provided, *ibid*.

¹²⁸ Interview I. Italic added to indicate that the decision to assist an EU citizen remains at the discretion of the Foreign and Commonwealth Office.

¹²⁹ Select Committee on European Scrutiny – Twenty-Sixth Report, *op cit* at col. 5.10.

¹³⁰ Interview I.

¹³¹ Interview I.

nationals could not be covered by current resources and would not justify a rise in current passport fees.’¹³²

The United Kingdom does not intend to negotiate bi-lateral agreements with third countries to extend consular assistance to the non-EU family members of EU citizens.

Financial advances to EU citizens

The United Kingdom does not provide financial advances as a legal right but *may* do so as a matter of policy. The United Kingdom may provide financial advances to non-British nationals (including EC nationals) but only in exceptional cases and only after all other resources have been exhausted.¹³³ Other possible alternatives include the obtaining of monies by way of electronic money transfer from friends, relatives or family members, which must be exhausted. **If a financial advance is provided, the individual in question must deposit his/her passport as security to the Consular Post and have an emergency travel document issued.**¹³⁴ **The individual in question will then be obliged to reimburse the money to the United Kingdom, or his/her Government must reimburse the United Kingdom.**¹³⁵ There are no summaries of important cases publicly available. The United Kingdom has not, however, experienced significant difficulties in providing and being reimbursed for financial assistance to unrepresented EU citizens.¹³⁶

The United Kingdom will not provide a financial advance unless it has received agreement from the individual’s Member State. As indicated above, this is because the United Kingdom will reclaim the money from the Member State, but it is also to prevent ‘Consular Shopping’. Thus, the individual’s Member State will be aware of whether its citizen has already received, or attempted to receive, a financial advance from a different Embassy or Consular Post.¹³⁷ If the Member State does not agree to the financial advance, or does not agree to reimburse the United Kingdom, then a financial advance will not be provided. Instead, the individual will be referred to their nearest Embassy, High Commission, Consular Post or Honorary Consul. In addition, the United Kingdom, in consensus with other Member States, is developing **a system of ‘informal’ networks of information exchange between Embassies at the local level.**¹³⁸ This is intended to identify trends and further prevent ‘Consular Shopping’.¹³⁹ For this reason, the United Kingdom believes that it would not be practical for ‘common’ or ‘European’ offices to provide financial advances to EU citizens.¹⁴⁰ Indeed, the staff at ‘common’ offices would have to administer 27 different kinds of financial arrangements.¹⁴¹ Thus, from the perspective of the United Kingdom, the current method of providing financial advances to EU citizens on a non-discriminatory basis through informal networks is more effective.¹⁴²

¹³² The United Kingdom Government (2007), *op cit* at para. 3.2.

¹³³ Interview I.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ The United Kingdom Government (2007), *op cit* at para. 3.9.

¹³⁷ Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *op cit* at col. 12.

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ The United Kingdom Government (2007), *op cit* at *ibid.*

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

Consular assistance in cases of death

The United Kingdom does not provide consular assistance in cases of death as a legal right but does so, rather, as a matter of policy.¹⁴³ **The assistance provided by the United Kingdom is, however, limited in nature.** As soon as the United Kingdom is informed of the death of a British national overseas, a member of the deceased's family will be contacted as soon as possible.¹⁴⁴ If the next of kin is in a different country, the nearest Consular Post will **inform** them of the death.¹⁴⁵ The next of kin can register a death with the British Embassy, the High Commission or the Consulate which will issue a United Kingdom-style death certificate.¹⁴⁶ Apart from this, however, British consular staff cannot interfere with the authorities in the receiving State. Thus, post-mortem examinations may be carried out by the local authorities without the permission of the next of kin and organs may be removed and kept during these procedures without the next of kin being informed or consulted.¹⁴⁷ Similarly, in cases of death in suspicious circumstances, the United Kingdom can only provide the next of kin **information** of how to raise concerns with the local authorities and provide basic information about the local law and legal system, including any legal aid that is available.¹⁴⁸ It is the responsibility of the next of kin who is suspicious of the circumstances of the death, and not that of British consular staff, to instigate and proceed with any legal action. The United Kingdom can provide **lists of local lawyers and interpreters** but it cannot pay for either.¹⁴⁹ The United Kingdom cannot investigate deaths or interfere with local investigations and, in any case, in many countries the investigating authorities will refuse to answer enquiries from British consular staff.¹⁵⁰ In exceptional cases, the United Kingdom may consider making appropriate representations to the local authorities if there are concerns that the investigation is not being conducted in line with local procedures or if there are justified complaints that there is discrimination against the deceased or his/her family.¹⁵¹ The United Kingdom may also be able to relay new developments in the investigation if informed by the local authorities.¹⁵²

There are no summaries of important cases publicly available.

The identification and repatriation of remains

The United Kingdom does not provide consular assistance in cases of identification and repatriation of remains as a legal right but, does so, rather, as a matter of policy. In crisis

¹⁴³ The policy of the United Kingdom on consular assistance in cases of death overseas is published in 'Death Overseas', available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/death-overseas>. In addition, see 'Bereaved Families', available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/bereaved-families>. Also, see 'Support for British Nationals Abroad: A Guide', *op cit*. United Kingdom organisations are also recommended, including www.samaritans.org; www.crusebereavementcare.org.uk; www.sammabroad.org.uk.

¹⁴⁴ This must be the deceased's next of kin or the person the next of kin has asked to act on his or her behalf in relation to the funeral and dealing with the belongings of the deceased, 'Support for British Nationals Abroad: A Guide', *ibid*.

¹⁴⁵ *Ibid*.

¹⁴⁶ *Ibid*. In certain countries, British Embassies, High Commissions and Consulates cannot currently issue death certificates, *ibid*.

¹⁴⁷ *Ibid*.

¹⁴⁸ *Ibid*.

¹⁴⁹ *Ibid*.

¹⁵⁰ *Ibid*.

¹⁵¹ *Ibid*. The standard of investigative procedures and expertise varies greatly across the world and may be different to that of the United Kingdom, *ibid*.

¹⁵² The policy of the United Kingdom in cases of serious accident or serious illness is available in 'Support for British Nationals Abroad: A Guide', *ibid*.

situations, the United Kingdom may provide consular assistance to EU citizens and any other citizens from States with which the United Kingdom has specific bi-lateral consular agreements. The United Kingdom will inform the next of kin of the deceased of the cost of local burial and local cremation, and of transporting the body and personal belongings back to the United Kingdom (repatriation).¹⁵³ The United Kingdom **cannot pay** any burial, cremation or repatriation expenses or settle any debts; although it can transfer money from friends and relatives in the United Kingdom to pay the necessary costs.¹⁵⁴ A list of local and international funeral directors can be provided, as well as any English translation that may be required.¹⁵⁵ In the event of crisis, local practices may change and the United Kingdom cannot ensure that bodies will be repatriated without delay.¹⁵⁶

The identification of victims of disasters is a highly complex and technical area of work. The identification and repatriation of remains in crisis situations is one of the most important issues for the United Kingdom.

In 2007, the United Kingdom signed a **DVI (Disaster Victim Identification) Protocol** with Interpol. Subsequently, the DVI was used in the air crash in Phuket in September 2007.¹⁵⁷ The United Kingdom works closely with the Interpol DVI Steering Group. It consists of police and practitioners from eight countries with extensive practical experience of DVI and the Interpol DVI Standing Committee. This Steering Group meets bi-annually to maintain the integrity and drive the co-ordination of DVI matters. The United Kingdom believes that Interpol processes are effective and should be supported by Member States.¹⁵⁸ There are no statistical data or published information publicly available of the use of DVI. There are no summaries of important cases of repatriating remains publicly available. The United Kingdom is in agreement with the European Commission that the prompt and accurate identification of mortal remains is a pre-requisite for their repatriation.¹⁵⁹ Accordingly, the United Kingdom is encouraging further research and development on DNA identification techniques, CT scanning and electronic scanning and transmission of fingerprints.¹⁶⁰

Consular assistance in cases of serious accident or serious illness

The United Kingdom does not provide consular assistance in cases of accident or serious illness as a legal right but does so, rather, on the basis of policy. The United Kingdom will aim to **contact** British nationals who are admitted to hospital as soon as possible or within twenty-four hours of being notified if the serious accident or serious illness is a result of a crime.¹⁶¹ For all other cases of serious accident or serious illness, the United Kingdom will aim to **visit** a British national, if it is appropriate, within forty-eight hours.¹⁶² The United Kingdom will contact the friends and family of a British national if necessary,¹⁶³ and will also consult the insurance companies of injured British

¹⁵³ *Ibid.* In some countries, the lack of suitable storage may make it impossible to obtain the necessary international certificates to repatriate the body, *ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ The United Kingdom Government (2007), *op cit* at para. 3.8.

¹⁵⁹ *Ibid* at para. 3.7.

¹⁶⁰ *Ibid.*

¹⁶¹ 'Support for British Nationals Abroad: A Guide', *ibid.* There must be a British Embassy, High Commission or Consulate in the same city as the hospital, *ibid.*

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

nationals, if necessary. **There are no summaries of important cases publicly available.**

Consular assistance to victims of violent crime

The United Kingdom does not provide consular assistance in cases of victims of violent crime as a legal right but it does so, rather, as a matter of policy.¹⁶⁴ The assistance provided by the United Kingdom is, however, limited in nature. British nationals who are the victim of crime will be provided with **general information about local police and legal procedures** by the United Kingdom.¹⁶⁵ **Legal advice cannot be provided, crimes cannot be investigated and evidence cannot be collected.**¹⁶⁶ Doctors, friends and family can be contacted if necessary.¹⁶⁷ Financial assistance may be provided in exceptional cases and after all other alternative resources have been exhausted.¹⁶⁸ The Foreign and Commonwealth Office has a published leaflet entitled 'Victims of Crime Abroad'.¹⁶⁹ British nationals may find additional support at Victim Support.¹⁷⁰

British nationals who are the victim of rape or sexual assault will be offered support as soon as possible, in private, and with a female consular officer.¹⁷¹ In cases of rape or sexual assault, the British consular staff may escort victims to the police station, if necessary, and request that the interview be undertaken by a female police officer, if preferred.¹⁷² It is the responsibility of the victim to report the rape or sexual assault and to instigate and fund legal proceedings.¹⁷³ The United Kingdom may also deal with the local authorities to arrange a medical examination by a female doctor and, depending on local laws and conditions, arrange a female doctor to give advice on sexually transmitted infections, including HIV and AIDS, and on pregnancy and abortion.¹⁷⁴ British consular staff will, if requested, contact friends or family on their behalf.¹⁷⁵

There are no summaries of important cases publicly available.

Consular assistance in cases of arrest and detention

The United Kingdom does not provide consular assistance in cases of arrest and detention as a legal right but does so, rather, on the basis of policy. **The United Kingdom does support, albeit limitedly, British nationals detained overseas and**

¹⁶⁴ The policy of the United Kingdom on consular assistance in cases of victims of violent crime is published in 'Support for British Nationals Abroad: A Guide', *ibid*. In addition, see 'Victims of Crime Abroad', available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/victims-of-crime-abroad>.

¹⁶⁵ 'Support for British Nationals Abroad: A Guide', *ibid*.

¹⁶⁶ *Ibid*.

¹⁶⁷ *Ibid*.

¹⁶⁸ For example, money transfers from friends, relatives or family.

¹⁶⁹ Available online: www.fco.gov.uk/travel.

¹⁷⁰ Available online: www.victimsupport.org.

¹⁷¹ The policy of the United Kingdom Government on consular assistance in cases of rape and sexual assault is available 'Support for British Nationals Abroad: A Guide', *op cit*. In addition, see the published policy 'Rape and Sexual Assault Overseas', available online:

<http://www.fco.gov.uk/resources/en/pdf/2855621/rape-and-sexual-assault-overseas>.

¹⁷² 'Support for British Nationals Abroad: A Guide', *ibid*.

¹⁷³ *Ibid*.

¹⁷⁴ *Ibid*.

¹⁷⁵ *Ibid*.

works closely with and part-funds the charities, Prisoners Abroad and Reunite.¹⁷⁶

If a British national is arrested or held in custody overseas, it is the responsibility of the authorities to ask the detainee whether they want them to contact the British Embassy, High Commission or Consulate.¹⁷⁷ British nationals can also request this to be done, particularly if charged with a serious offence.¹⁷⁸ The United Kingdom will aim to **contact** detained British nationals within twenty-four hours of being notified about detention or arrest and **visit** as soon as possible, if necessary.¹⁷⁹ The United Kingdom cannot provide legal advice, start legal proceedings or investigate the crime.¹⁸⁰ Basic information regarding the local legal system can be provided, including legal aid, and a list of local lawyers and interpreters, although the United Kingdom cannot pay for either.¹⁸¹ The United Kingdom cannot get British nationals released from prison or get them ‘special treatment’ just because they are British.¹⁸² Information about the prison or remand system can be provided, including visiting arrangements, mail and censorship, privileges, work possibilities, and social and welfare services.¹⁸³ If appropriate, the United Kingdom will consider approaching the local authorities if British nationals are not treated in line with internationally accepted standards, including ill-treatment, personal safety, discrimination by police or prison authorities and access to medical and dental treatment.¹⁸⁴

The United Kingdom will consider making ‘[representations](#)’ on behalf of British nationals in relation to convictions and sentencing abroad if, after all legal remedies have been exhausted, ‘the British national and their lawyer have evidence of a miscarriage or denial of justice ... [and] cases where fundamental violations of the British national’s human rights had demonstrably altered the course of justice.’¹⁸⁵ As discussed above, ‘representations’ must be distinguished from consular assistance and are not provided to non-British nationals. Normally, however, in cases where a British national has been the victim of a miscarriage of justice or a violation of human rights, the United Kingdom believes that:

*the most appropriate course of action is for the defendant’s lawyers to take action through the local courts. If concerns remain, their lawyers can take the case to the United Nations Human Rights Committee, where the State in question has accepted the rights of individual petition under ICCPR. The United Kingdom will also consider making direct representations to third governments on behalf of British nationals where it is believed that they were in breach of their international obligations.*¹⁸⁶

All locally available legal or administrative remedies must be exhausted before the United Kingdom will normally consider making formal ‘representations’ on behalf of

¹⁷⁶ ‘Support for British Nationals Abroad: A Guide’, *op cit.* The United Kingdom will also put British nationals in touch with the charity, Fair Trials International, available online: www.fairtrials.net. These charities primarily work with British nationals detained overseas.

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

¹⁸³ *Ibid.* This includes due process at the trial and any unreasonable delay prior to the trial, *ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ Baroness Scotland of Asthal, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, HC Deb., vol. 341, col. 253W: 16 December 1999. In addition, see Crawford & Lowe, *op cit.*

¹⁸⁶ *Ibid.*

British nationals to the authorities of foreign Governments.¹⁸⁷ What is less clear, however, is whether formal ‘representations’ will be made by the United Kingdom only if there are no international avenues of potential redress available to the individual, or if the exhaustion of international procedures is a necessary pre-condition. It would appear that this remains a matter of discretion. What is clear is that the United Kingdom will continue to give ‘consideration’ to making formal ‘representations’ in the fulfilment of its obligations under the doctrine of legitimate expectation.

The United Kingdom will inform British nationals of early release, known as pardon and clemency. The United Kingdom will support the pardon and clemency pleas of British nationals only on the basis that there are compelling or compassionate circumstances, ‘namely where a prisoner is terminally ill or when a close relative is terminally ill and their death will leave children or elderly relatives with no one to care for them.’¹⁸⁸ This was reiterated by Baroness Scotland of Asthal, Parliamentary Under-Secretary of State at the Foreign and Commonwealth Office, who observed that this policy best achieves ‘clear’ and ‘objective’ criteria, which is the primary concern for the United Kingdom.¹⁸⁹ Additional circumstances include minors that have been imprisoned, or where evidence is indicative of a miscarriage of justice, or where the death penalty will be imposed.¹⁹⁰

If **prison transfers** are possible, assistance will be provided on how to apply for a transfer to a British prison.¹⁹¹ If the local authorities have a policy of deportation following the completion of a prison sentence, the United Kingdom cannot interfere or prevent deportation, even if individuals were resident in the deporting State prior to the prison sentence.¹⁹² The United Kingdom can inform family and friends and relay messages and, in certain circumstances, money,¹⁹³ in countries where there is no phone or postal service.¹⁹⁴ Dependent upon the rules of the prison, assistance may be provided to help detained British nationals to buy prison ‘comforts’ with any monies sent by family or friends.¹⁹⁵ The United Kingdom will visit British nationals once after sentencing and, thereafter, only if there is a ‘real need’ if they are detained in an EU country, Iceland, Liechtenstein, Norway, Switzerland, Canada, the United States of America, Australia or New Zealand.¹⁹⁶ For British nationals detained in other countries, the United Kingdom will aim to visit at least once a year, or more often if necessary.¹⁹⁷

¹⁸⁷ For example, see *R v Secretary of State for the Foreign and Commonwealth Affairs, ex parte Butt* (1999) 116 ILR 607 (unreported).

¹⁸⁸ Crawford & Lowe, *op cit* at p. 529. In addition, ‘Support for British Nationals Abroad: A Guide’, *op cit*.

¹⁸⁹ Baroness Scotland of Asthal, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, *op cit* at *ibid*.

¹⁹⁰ *Ibid*.

¹⁹¹ ‘Support for British Nationals Abroad: A Guide’, *op cit*. In addition, United Kingdom policy is contained in ‘Transfer Home from Prisons Abroad’, available online: <http://www.fco.gov.uk/resources/en/pdf/2855621/transfers-home>.

¹⁹² ‘Support for British Nationals Abroad: A Guide’, *ibid*; ‘Transfer Home from Prisons Abroad’, *ibid*. This is applicable to any category of persons who are not defined as ‘British nationals’.

¹⁹³ In some countries, there may be a charge for this service, ‘Support for British Nationals Abroad: A Guide’, *ibid*.

¹⁹⁴ *Ibid*.

¹⁹⁵ *Ibid*.

¹⁹⁶ *Ibid*.

¹⁹⁷ *Ibid*. The United Kingdom will also put British nationals in touch with the prisoners’ welfare charity, Prisoners Abroad, available online: www.prisonersabroad.org.uk.

If the arrest or conviction is for a serious offence, other relevant United Kingdom authorities must be informed.¹⁹⁸

There are no summaries of important cases publicly available. One of the main issues currently concerns Prisoner Transfer Agreements and the legality of continued detention once a British national prisoner has been transferred from a foreign country back to the UK.¹⁹⁹ British nationals sometimes agree to Prisoner Transfer Agreements initially and then contest their validity once they have been transferred to prisons in the United Kingdom to serve the remainder of their sentences.²⁰⁰ There are, as yet, no reported cases on this matter.

Informing EU citizens of consular assistance under Article 23(1) TFEU

The United Kingdom agrees with the European Commission that EU citizens, where unrepresented by their own Member State in third countries, should be better informed about their ‘opportunity’ to seek consular assistance under Article 23(1) TFEU from other Member States.²⁰¹ The United Kingdom is not in agreement with the wording of Article 23(1) TFEU and has not, as of yet, decided what the wording should be. It is certainly the case, however, that the United Kingdom does not believe that the wording of Article 23(1) TFEU is legally clear [see Section (i)] or its language sufficiently simple for its own nationals to understand.²⁰² **Thus, before the United Kingdom prints Article 23819 TFEU in British passports, which is estimated to be 2010, its wording will have to be rephrased and made legally clear and accurate.** The United Kingdom is interested in potential publicity campaigns that could be undertaken by the European Commission to inform EU citizens, but only on the basis that the wording of Article 23(1) TFEU has been legally clarified.

The establishment of ‘European’ Consular Posts

The United Kingdom is not in agreement with proposals to establish ‘European’ Consular Posts and the delivery of consular services by ‘European’ Consulates for unrepresented EU citizens in third countries.²⁰³ The United Kingdom has put forward several practical and legal objections to ‘European’ Consular Posts. The European Commission does not have practical experience or expertise in providing consular assistance²⁰⁴ and the United Kingdom does not have the time and resources to train European delegates.²⁰⁵ European Consular Posts could ‘complicate’ and ‘duplicate’ the existing structures and efforts of Member States.²⁰⁶ There are concerns of how the European Commission would finance its consular assistance and that it could create an ‘unsustainable financial burden’.²⁰⁷ ‘European’ consular assistance, delivered by the institutions of the European Commission itself, does not respect the boundary

¹⁹⁸ For example, child sex abuse or drugs crimes, *ibid.*

¹⁹⁹ Interview I.

²⁰⁰ *Ibid.*

²⁰¹ The United Kingdom Government (2007), *op cit* at para. 2.1.

²⁰² Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *op cit* at col. 9.

²⁰³ Interview I. These Consular Posts would, according to the European Commission, be provided by the European Commission’s global network of delegations.

²⁰⁴ Geoff Hoon, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *op cit* at col. 5; Select Committee on European Scrutiny – Sixteenth Report, *op cit* at para. 2.7.

²⁰⁵ Select Committee on European Scrutiny – Sixteenth Report, *ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

between the primary responsibility of the authorities of Member States, on the one hand, and the subsidiary role of the European Commission for the organising and sharing of best practice and information between Member States, on the other.²⁰⁸ There may, however, be potential for the European Commission and the Council Secretariat to provide logistical and communications support to Member States in crisis situations (discussed below).²⁰⁹ Indeed, assistance could be provided to Member States by the European Commission through its proposed development of a 'European External Action Service'. The United Kingdom has not rejected outright the development of a European External Action Service but it does believe that the boundary of subsidiarity must be observed.²¹⁰ In concurrence with its French counterpart, the United Kingdom does not believe that the European Commission has been able to demonstrate that the establishment of 'European' Consular Posts would be more efficient than the existing system of consular assistance that is delivered by Member States.²¹¹ **Member States allocate unrepresented EU citizens amongst themselves on the basis of resources, language, experience, culture and national ties. These agreements are made, monitored and adjusted by consulates locally.**²¹² **Member States cooperate together, monitor trends, develop strategies and prevent problems such as 'Consular Shopping'.**²¹³ These agreements appear to be 'informal' and the United Kingdom does not publish or make publicly available data on this issue.

In addition to practical problems, the United Kingdom believes that 'European' Consular Posts and the delivery of consular assistance by 'European' Consulates would give rise to legal difficulties.²¹⁴ Indeed, the United Kingdom has suggested that there is no legal basis for the establishment of European Consular Posts under Article 23 TFEU beyond a role of subsidiarity.²¹⁵ In addition, international law and customary international law provide for the provision of consular assistance by States.²¹⁶ Thus, the United Kingdom has stated that 'European' Consular Posts would be contrary to international law and the principles enshrined in the Vienna Convention on Consular Relations:

*The Vienna Convention on Consular Relations, and applicable bilateral consular conventions, provide a framework for the conduct of inter-State relations; they do not cover the provision of consular assistance by international or intergovernmental organizations. Furthermore, we do not believe that the Commission and the EU have competence under the existing treaties to provide consular assistance.*²¹⁷

²⁰⁸ Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, Select Committee on European Scrutiny – Fourteenth Report, 'Diplomatic and Consular Protection of Union Citizens in Third Countries', session 2007-08, at cols. 2.21, 2.22, available online: in the [CARE Database](#). Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *op cit* at col. 7.

²⁰⁹ Geoff Hoon, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *op cit* at col. 5.

²¹⁰ Liam Byrne, Minister of State at the Home Office, Select Committee on European Scrutiny – Twenty-Third Report, *op cit* at col. 20.6.

²¹¹ Select Committee on European Scrutiny – Sixteenth Report, *op cit* at para. 2.9.

²¹² The United Kingdom Government (2007), *op cit* at para. 4.1.

²¹³ Interview I.

²¹⁴ Select Committee on European Scrutiny – Sixteenth Report, *op cit* at para. 2.6.

²¹⁵ Sir Jim Murphy, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *op cit* at col. 7; Geoff Hoon, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *op cit* at col. 5.

²¹⁶ The United Kingdom Government (2007), *op cit* at para. 4.8.

²¹⁷ Select Committee on European Scrutiny – Sixteenth Report, *op cit* at para. 2.13.

'Common' consular support between Member States

The United Kingdom believes that the concept of 'common' consular assistance is problematic. Thus, **the United Kingdom has consistently rejected proposals by the European Commission for harmonisation in consular policy and practice.** The United Kingdom believes that speaking and acting with a single 'EU' or 'common' approach in the delivery of consular services, which is currently provided by 27 Member States, would be impracticable and inefficient. **Indeed, each Member State has different expertise and different levels of consular assistance around the world.**²¹⁸ Thus, with the exception of procedures such as financial advances and the repatriation of remains, and potentially crisis situations, it is difficult to find common ground and mutually beneficial solutions between Member States. The United Kingdom does believe, however, that there may be mutual benefits from Member States sharing 'EU' premises to pool resources and share overhead costs, for example, in countries where it is not economically viable to establish independent Embassies.²¹⁹ However, such premises would comprise separate facilities within a shared building and formal separation in respect of consular assistance would be maintained.²²⁰ The European Commission must not have an 'authoritative presence' in those premises, although it could potentially provide funding and logistical support to Member States. Thus, **there is an important distinction between sovereign Member States pooling resources among themselves for economic efficiency and the harmonisation of consular policies of Member States and the creation of 'European' Consuls.**²²¹

The co-location of consular premises between Member States

In the rejection of 'European' Consular Posts, **the United Kingdom has enthusiastically begun a process for the pooling of resources and reduction of financial burdens by co-locating its offices with other Member States.** Indeed, the United Kingdom co-locates in Almaty, Ashgabat, Dar es Salaam, Pyongyang, Quito, Reykjavik, Minsk and Chisinau.²²² Apart from trying to enhance efficiency and coordination with other Member States,²²³ **it would appear that one of the main reasons for co-locating is because the United Kingdom has insufficient capital to fund its global estate of Embassies and Consular Premises.** Indeed, in recent years, the Foreign and Commonwealth Office has been forced to sell parts of its estate in order to meet 'higher priorities'.²²⁴

In addition, funding the maintenance of its global network of Defence Attachés/Advisers at Consular Posts appears to be problematic. For example, prior to 2007 the Foreign and Commonwealth Office made an annual contribution to the United Kingdom Ministry of Defence of 30 *per cent* or £10,000,000 to its network of Defence Attachés/Advisors at Consular Posts; in 2007, however, this financial support was unilaterally withdrawn by the Foreign and Commonwealth Office, despite the Defence Attachés network serving 'primary defence objectives' and the United Kingdom's 'international security policy'.²²⁵

²¹⁸ Geoff Hoon, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *op cit* at col. 4.

²¹⁹ Interview I. Geoff Hoon, Minister of Europe at the Foreign and Commonwealth Office, European Standing Committee, *ibid* at col. 7.

²²⁰ Geoff Hoon, Minister for Europe at the Foreign and Commonwealth Office, European Standing Committee, *ibid* at col. 10.

²²¹ *Ibid* at col. 7.

²²² *Ibid* at col. 4.

²²³ Select Committee on European Scrutiny – Sixteenth Report, *op cit* at para. 2.7.

²²⁴ Select Committee on Foreign Affairs – First Report, *op cit* at cols. 151-160.

²²⁵ *Ibid* at cols. 167-172.

The reason for the termination of this funding was to reduce the demands on its annual budget and to make efficiency savings.²²⁶

The conclusion of the Select Committee on Foreign Affairs is that the Foreign and Commonwealth Office may not have the necessary funding to perform all of its roles efficiently and effectively. Moreover, there is a danger that it may be forced to make inappropriate asset sales in the future.²²⁷ Given the apparent financial constraints of the Foreign and Commonwealth Office, it would appear that funding its network of Embassies and Consular Posts, and providing for the security of these premises, could become increasingly problematic in the future. The United Kingdom, as with other Member States, may have no other option but to increase co-location. Co-location does not, however, provide for the United Kingdom's international security policy. There may be potential for greater involvement by the European Commission, in particular, financial and logistical assistance. There does appear to be potential for the development of shared 'EU' consular premises (discussed above).

Natural disasters, terrorist acts, military conflicts and pandemics

The United Kingdom responds to natural disasters, terrorist acts, military conflicts and pandemics under the generic term of 'crises'. The United Kingdom does not provide consular assistance in cases of natural disasters, terrorist acts, military conflicts and pandemics as a legal right but does so, rather, as a matter of policy. A brief overview of the policy of the United Kingdom in cases of natural disasters, terrorist acts, military conflicts and pandemics may be found in 'Support for British Nationals Abroad: A Guide'.²²⁸

In cases of **natural disaster**, the United Kingdom will consider whether to offer '**Exceptional Assistance Measures**' to British nationals who are directly affected.²²⁹

The decision to offer exceptional help and what that help should be must now be made by the Foreign Secretary.²³⁰ Factors that may influence this decision include the following: a breakdown of basic local services, such as transport, preventing British nationals from getting support directly, or if a large number of British nationals have lost all forms of identification, travel documents, insurance policies and belongings.²³¹

Examples of exceptional assistance provided to British nationals include the tsunami which struck Southern Asia in 2004 and Hurricane Katrina that struck the United State of America in 2005.²³² There are no summaries of important cases publicly available.

In cases of **terrorist acts** overseas, the United Kingdom has in place, and regularly reviews, Exceptional Assistance Measures for the victims and their families.²³³ The assistance provided, including financial assistance, is additional to normal consular

²²⁶ Sir Peter Ricketts, Minister for the Foreign and Commonwealth Office, justified the termination of the funding by stating that: '[...] like all Departments, we are under real pressure from the Treasury to show efficiency savings. We therefore had to look at the totality of our expenditure and make some prioritisation choices. [...] We took the view that it was entirely right that the MOD [UK Ministry of Defence] should fund the defence attaché network for defence purposes [...]', cited by the Select Committee on Foreign Affairs – First Report, *ibid* at col. 168.

²²⁷ *Ibid.*

²²⁸ 'Support for British Nationals Abroad: A Guide', *op cit.* Information, however, is limited.

²²⁹ *Ibid.*

²³⁰ *Ibid.* This is dependent upon the type of catastrophe and the resources available, *ibid.*

²³¹ *Ibid.*

²³² *Ibid.* There are no published documents or statistical data publicly available on exceptional consular assistance.

²³³ *Ibid.*

assistance and will **vary** according to the particular circumstances of each situation ('Additional assistance' under Exception Assistance Measures may include the following: medical evacuation for injured individuals and evacuation for individuals in danger, which may be to a safe region of the country and not to the United Kingdom; paying immediate medical expenses; repatriating bodies or remains to the United Kingdom; paying expenses to return the luggage of those killed or injured; travel for two of the victim's family to the site of the attack; and accommodation and travel insurance).²³⁴ Assistance will only be provided as a last resort and only if the costs are not covered by existing insurance policies, employer schemes, the Government of the country involved or any other sources.²³⁵ **Assistance will not be provided if individuals travel to a particular country against the advice of the Foreign and Commonwealth Office or if they did not take out travel insurance of their own.**²³⁶

There are no summaries of important cases publicly available.

In case of **pandemic**, such as avian and human flu pandemics, British Embassies, High Commissions and Consulates will only be able to provide information on local medicine and healthcare that is available and will not be able to provide drugs to treat flu.²³⁷ It is the responsibility of British nationals to take personal responsibility for their own health and consult employers, if appropriate.²³⁸ The Foreign and Commonwealth Office will not be in a position to transport British nationals back to the United Kingdom during pandemic²³⁹ and some diplomatic or consular missions may have to be closed temporarily.²⁴⁰ There are no summaries of important cases publicly available.

The degree of consular assistance available in cases of **military conflicts** is not specified in published documents although the Consular Assistance Annual Report for the financial year 2008/09 does state that consular assistance was provided to British nationals, EU citizens and British Commonwealth citizens during the Russia/Georgia military conflict.²⁴¹ There are no summaries of important cases publicly available.

United Kingdom Consular Crisis Response

As indicated above, the United Kingdom responds to natural disasters, terrorist acts, military conflicts and pandemics under the generic term of 'crises'. The United Kingdom does not provide consular assistance in crises as a legal right but does so, rather, as a matter of policy. The United Kingdom responds to individual crises on an *ad hoc* basis as and when they occur by using its **Consular Crisis Team** and **Consular Rapid Deployment Teams** (discussed below).²⁴² The United Kingdom has a Consular Crisis Centre that is equipped with 67 workstations, including Firecrest and broadband networks, video and telephone conferencing facilities, television screens and access to key press agency feeds.²⁴³ This facility has the capacity to respond to two crises at a

²³⁴ *Ibid.*

²³⁵ *Ibid.*

²³⁶ *Ibid.*

²³⁷ *Ibid.*

²³⁸ *Ibid.*

²³⁹ Mainly because of the large number of people involved and the practical difficulties involved.

²⁴⁰ *Ibid.*

²⁴¹ Consular Services Annual Report 2008/09, *op cit*.

²⁴² *Ibid.* RDTs consist of specialist trained crisis response volunteers who deploy from either London, Asia-Pacific region or the United States of America. There are currently 160 RDT members globally. Dependent upon the crisis, RDTs are deployed with members of the Red Cross, International SOS and Police Disaster Victim Identification staff, available in 'Support for British Nationals Abroad: A Guide' *op cit*.

²⁴³ Select Committee on Foreign Affairs – First Report, *op cit* at col. 175.

time.²⁴⁴ The United Kingdom Crisis Response is set out in the Guide to Consular Assistance entitled ‘Support for British Nationals Abroad: A Guide’.²⁴⁵ The United Kingdom is also the co-author of the **Lead State concept** which it uses and works with its European partners through Lead State frameworks in response to crises (discussed below).²⁴⁶ Since 2008, other crisis initiatives include **Emergency Response Teams (ERTs)**²⁴⁷ and **Regional Resilience Networks (RRNs)**.²⁴⁸ The level of response is dependent upon the circumstances of the particular crisis.²⁴⁹ Rapid Deployment Teams and the Lead State concept provide the most ‘flexible’ and ‘cost-effective’ way of responding to crises.²⁵⁰ The Foreign and Commonwealth Office plan for crises and periods of instability by utilising trigger matrices in Consular Posts’ contingency plans.²⁵¹

The United Kingdom does not extend consular assistance to non-British nationals, non-British family members of British nationals and non-EU citizens in crisis situations as a matter of right but may do so as a matter of policy.²⁵² There is no statistical data for British nationals and non-British nationals (including EU citizens) that have received consular assistance in crisis situations that is published or publicly available. There is no statistical data for the cost of responding to crisis situations publicly available. The Emergency Disaster Reserve for the financial year 2007/08 had a budget of £500,000.²⁵³ There are no publicly available figures for the Emergency Disaster Reserve for successive years or for what it is planned in forthcoming years.

In addition to Consular Crisis Response Teams and Consular Rapid Deployment Teams, the Foreign and Commonwealth Office works in partnerships with Ministries of Foreign Affairs to handle consular crises. The Foreign and Commonwealth Office have a weekly teleconference with the United States of America, Australian, Canadian and New Zealand partners (Colloque partners hereinafter). The Foreign and Commonwealth Office participate in the COCON (EU Council Working Group on Consular Affairs) every two months and continue to share best practice in development and use of its Crisis Centre. Canadian, Australian, Swedish and Dutch colleagues visit the Crisis Centre to learn and share best practice.

The Foreign and Commonwealth Office also has partnerships with the Travel Industry and meets regularly with representatives from the Association of British Travel Agents

²⁴⁴ *Ibid.*

²⁴⁵ ‘Support for British Nationals Abroad: A Guide’, *op cit.*

²⁴⁶ Interview I.

²⁴⁷ ERTs are specialist trained Foreign and Commonwealth Office volunteers who respond to telephone calls from the public in a crisis. ERTs log details of potentially affected British nationals on to the registration system, LOCATE. There are currently 120 ERT members. See the Consular Services Annual Report 2008/09, *op cit.*

²⁴⁸ *Ibid.*

²⁴⁹ Interview I.

²⁵⁰ Interview II. The Consular Services Annual Report for the financial year 2007/08 provides in its Business Targets that ‘Quick, effective and value-for-money responses to major crises involving British nationals overseas through effective emergency preparedness and crisis management involving close partnerships with others’ was only partially met, *op cit* at p. 10.

²⁵¹ The role of trigger matrices is to highlight the medium to high risk political, economic and security-related developments in a country and how they are likely to impact British nationals. Trigger matrices are mandatory for all countries where there is a medium or high risk of development that may affect British nationals. The Foreign and Commonwealth Office liaise closely with the Ministry of Defence and both participate in joint evacuation exercises. See ‘Support for British Nationals Abroad: A Guide’, *op cit.*

²⁵² Interview I.

²⁵³ This budget was halved from £1 million from the previous year. There is no published or publicly available statistical data on what defined crises this budget is intended to be used on or in what circumstances (Consular Services Annual Report for the financial year 2007/08, *op cit.*)

(ABTA); the Federation of Tour Operators (FTO); and the Association of Independent Tour Operators (AITO). For example, the United Kingdom worked closely with the FTO during the Kenyan crisis in January/February 2008. The Foreign and Commonwealth Office also has stakeholder partnerships with NGOs, including the Red Cross; Prisoners Abroad; Fair Trials International; Reunite; Reprieve; and the Iranian and Kurdish Women's Rights Organisation (IKWRO).

A further initiative of crisis response is the LOCATE Project, which went live in December 2007. It is an online service for British nationals to register with the British Embassy, Consulates and Crisis Team and for reporting affected/missing persons during crises overseas, including natural disasters and terrorists acts.²⁵⁴ It assists the United Kingdom in locating British nationals during crises.

Crisis Response statistical data

The United Kingdom does not make publicly available statistical data for consular assistance provided in crises. The United Kingdom does, however, provide a general overview of the number of times that its 'Crisis Response Mechanism' is activated in a particular financial year. For example, in the financial year 2007/08, the Crisis Response Mechanism was activated on 11 occasions in response to global crises.²⁵⁵ In the financial year 2008/09, the Crisis Response Mechanism was activated on 12 occasions in response to global crises.²⁵⁶ The figures are not yet available for the financial year 2009/10. There is no statistical break down provided for these figures. It is not clear, therefore, which global crises were being responded to. In addition, it is not clear how much these crises cost financially to respond to. **The criteria used by the United Kingdom to define 'crises' in order to activate its Crisis Response Mechanism is not publicly available.**

Rapid Deployment Team Deployments

The United Kingdom does not make publicly available statistical data for Rapid Deployment Team deployments. The United Kingdom does, however, provide a general overview of the number of times that its Rapid Deployment Teams were deployed in a particular financial year. Rapid Deployment Teams may be, but are not always, deployed when the Crisis Response Mechanism is activated. The Consular Services Annual Report does provide limited information on Rapid Deployment Team deployments.²⁵⁷

The financial year 2007/08 includes the following deployments: in March 2007 there was 1 deployment from the base in London to the Democratic Republic of Congo. In May 2007 there was 1 deployment from the base in London in response to the Cameroon Air Crash. In August 2007 there was 1 deployment from the base in the United States of America to the Dominican Republic. In the same month, there was 1 deployment (in addition to 1 pre-deployment for hurricane support) from the base in the United States of America to Miami in response to Hurricane Dean. In September 2007 there was 1 deployment from the base in the United States of America in response to Hurricane Felix in the United States of America. In October 2007 there was 1 deployment from the base in London and 1 deployment from the base in Hong Kong in response to the Phuket Air

²⁵⁴ LOCATE Project, available online: <http://www.fco.gov.uk/en/travelling-and-living-overseas/Locate/>.

²⁵⁵ There are no publicly available statistics or published data available on crises responded to; nor is there any financial statistical data available on how much financial expenditure has cost to respond to.

²⁵⁶ Consular Services Annual Report 2008/09, *op cit*. There are no publicly available statistics or published data on crises responded to by the Rapid Deployment Teams; nor is there any financial statistical data available of how much expenditure each crisis cost to respond to.

²⁵⁷ These figures are available in the Consular Services Annual Report 2007/08, *op cit*.

Crash. In addition, in January 2008 a Consular Resilience Team was dispatched from the base in London to Nairobi.²⁵⁸

The financial year 2008/09 includes the following deployments: 1 deployment sent from the base in London and 1 deployment from the base in Hong Kong in response to the earthquake in China; **1 deployment in response to armed conflict between Russia and Georgia**;²⁵⁹ 1 deployment in response to Hurricane Ike in Cuba;²⁶⁰ 1 deployment in response to terrorist attacks in Mumbai;²⁶¹ and 1 deployment in response to civil unrest in Thailand.²⁶² In response to the armed conflict between Russia and Georgia, in particular, the United Kingdom worked closely with the EU and Colloque partners.

The figures for the financial year 2009/10 are not yet available.

The 'Lead State' framework of consular cooperation between Member States

The United Kingdom is the co-author of the Lead State concept, the other Member State being France. **The United Kingdom uses the Lead State concept in two contexts, first, in the delivery of day-to-day consular assistance to unrepresented EU citizens in third countries and, second, in response to global and regional crises.** In both contexts the United Kingdom believes that the Lead State frameworks provide the most 'flexible' and 'cost-effective' approach to consular assistance. Indeed, Lead State frameworks can be negotiated by Member States to respond to new crises on an *ad hoc* basis, wherever they emerge in the world. In addition, it provides the most effective method for Member States to implement their obligations under Article 23(1) TFEU.

Under Lead State frameworks in the delivery of day-to-day consular assistance to unrepresented EU citizens in third countries, it is normal for one (although there can be more than one) Member State's diplomatic mission in a third country to take responsibility for unrepresented EU citizens in that particular territory. The Lead State coordinates the provision of consular assistance among the diplomatic missions of other Member States according to language, resources, experience, culture and national ties. **The negotiations of the Lead State and the agreements that are put in place to provide consular assistance to unrepresented EU citizens are made, monitored and adjusted locally by the diplomatic missions of Member States. These agreements appear to be informal.** As discussed above, however, consular assistance, from the perspective of the United Kingdom, is exercised as a matter of administrative discretion. It would appear that the Lead State concept has been developed in this context in the rejection of 'common' consular support and 'European' Consular Posts proposed by the European Commission. There is no statistical data or publicly available documents detailing EU citizens that have received consular assistance through Lead State frameworks. Thus, it is not clear how the Lead State and arrangements for consular assistance are negotiated between Member States, or how effective Member States cooperate with one and other in practice. There is no statistical data for the cost of assisting EU nationals under Lead State frameworks publicly available. There are no publicly available figures for the planned budget of Lead State frameworks for the delivery of day-to-day consular assistance in forthcoming years. It would appear, therefore, that this is an area that would benefit from further research.

²⁵⁸ *Ibid.*

²⁵⁹ It is not stated from which base the Rapid Deployment Team was deployed. **48 eligible persons (British nationals, EU citizens and British Commonwealth citizens) were assisted by bus from Tbilisi and taken to Yerevan.** Consular Services Annual Report 2008/09, *op cit.*

²⁶⁰ It is not stated from which base the Rapid Deployment Team was deployed.

²⁶¹ It is not stated from which base the Rapid Deployment Team was deployed.

²⁶² It is not stated from which base the Rapid Deployment Team was deployed.

Under Lead State frameworks in crisis situations, one Member State (there can be more than Lead State one) is designated as the Lead State and takes responsibility to ensure the efficient cooperation and coordination, including the sharing of resources, among Member States for the evacuation of unrepresented EU citizens. The number of designated Lead States and the resources involved are dependent upon the particular crisis. Member States normally negotiate amongst themselves which State will take the 'lead'. The agreements made between the United Kingdom and other Member States appear to be informal. In crisis situations, the United Kingdom is not under an obligation to provide consular assistance to British nationals or to non-British nationals (including EU citizens). In practice, however, consular assistance appears to be provided through relationships of reciprocity and mutual assistance between Member States. **During evacuations from crisis situations, it is United Kingdom policy to avoid splitting families, for example, if some family members are British nationals and others are British residents or nationals of third countries.** It is not clear, however, how problematic this issue is in practice. This same policy is normally applied to unrepresented EU citizens and third country nationals during crises but, again, it is not clear if this is problematic in practice. The United Kingdom has stated that it may not always be possible to evacuate third country nationals if they do not have visa status for the destination country.²⁶³ In a strict crisis, the United Kingdom would provide assistance to British nationals, because it would have a clear legal obligation to do so.²⁶⁴ In practice, however, the United Kingdom does not appear to have experienced problems with providing consular assistance to EU citizens.²⁶⁵ **The United Kingdom has cited the tsunami which struck Southern Asia in 2004 and the military conflict in Lebanon in 2006 as examples of effective coordination between Member States under Lead State frameworks.**

The Lead State concept appears to have been developed by the United Kingdom for crisis situations in the rejection of a 'European' consular service in crises to unrepresented EU citizens. Within Lead State frameworks in crisis situations, however, the United Kingdom believes that there is an active role for the European Commission to provide logistical and communications support if requested by Member States.²⁶⁶ There is also a role for the Council Secretariat to assist the Lead State by collecting and circulating important operational information, as it did in Lebanon in 2006.²⁶⁷ The United Kingdom believes that crisis cooperation must be flexible and fast, which can be achieved most effectively by Member States through the Lead State framework.²⁶⁸ Member States have the experience and expertise to provide consular assistance in crises. Thus, the United Kingdom believes that the European Commission must retain a subsidiary role. It is not clear, however, what the extent of that role should be.

For example, the United Kingdom has not rejected proposals for the potential development of a 'European Action Service' by the European Commission, but it does believe that this provision must be limited to a subsidiary role. Moreover, the United Kingdom believes that the European Action Service must not be used for the delivery of a day-to-day 'European' consular service. It would appear that further research needs to be undertaken on the extent of the potential role of European Commission and its European Action Service during crisis situations.

²⁶³ The United Kingdom Government (2007), *op cit* at para. 3.4.

²⁶⁴ Geoff Hoon, European Standing Committee, *op cit* at col. 13.

²⁶⁵ Interview I.

²⁶⁶ Geoff Hoon, European Standing Committee, *op cit* at col. 5.

²⁶⁷ The United Kingdom Government (2007), *op cit* at para. 4.5.

²⁶⁸ Select Committee on European Scrutiny – Fourteenth Report, *op cit* at col. 2.28.

There is no statistical data of consular assistance provided to EU citizens through Lead State frameworks in crisis situations that is published or publicly available, or how much it cost financially to provide consular assistance through Lead State frameworks in crisis situations. It is not clear, therefore, how many EU citizens have received consular assistance through Lead State frameworks in previous years, or how economically efficient Lead State frameworks have been. There are no publicly available figures for the budget of Lead State frameworks in crisis situations for forthcoming years. Accordingly, it is not possible to undertake objective analysis of the success of Lead State frameworks. It is not clear if the United Kingdom has the ability or the resources to provide consular assistance to British nationals or unrepresented EU citizens in increasing global insecurity of terrorism, military conflict, civil unrest, pandemics and natural disasters. Indeed, the Member States of the EU have expanded significantly in recent years and British nationals, and indeed EU citizens, are increasingly travelling and living overseas. At the same time, the Foreign and Commonwealth Office is facing increasing financial constraints and is under pressure to decrease its annual expenditure. Indeed, in recent years the Foreign and Commonwealth Office initiated its programme of ‘rationalisation’, that is, the reduction of its global network of Consular Posts to meet other ‘higher priorities’.

Of particular importance, there does appear to be little knowledge or understanding of the Lead State concept by British nationals. This is important given that the Lead State concept appears to be gaining increasing support amongst Member States. Indeed, in the rejection of ‘European’ Consular Posts and a ‘European’ consular service, the United Kingdom, for the foreseeable future, will remain enthusiastically committed to Lead State frameworks with European partners in crisis response.²⁶⁹ The United Kingdom is also committed to trans-national networks of best practice and the training of Member States’ consuls for crisis situations.²⁷⁰ As the co-author of the Lead State concept, the Foreign and Commonwealth Office lead scenario based exercises involving EU Member States in Cairo in 2007 and in Mexico in 2008. It will also continue to develop its consular training programme, which is delivered in regional training centres around the globe and Member States’ consular officials are encouraged to attend.

‘Consular Shopping’

One of the issues raised by Article 23(1) TFEU and the right to non-discrimination and equal treatment is ‘Consular Shopping’. **Consular Shopping occurs when unrepresented EU citizens in third countries ‘shop’ around the Embassies and Consular Posts of Member States to find the best service.** The United Kingdom is aware of the ‘risk’ that large numbers of EU citizens from smaller Member States that have lower levels of consular representation could place a disproportionate burden on its finances and resources. Indeed, this could be problematic for the United Kingdom which funds its consular services with revenue generated from British passports. Thus, one of the reasons that the United Kingdom insists that EU citizens have an equal opportunity to access consular assistance, but the assistance itself is exercised on the basis of administrative discretion. Moreover, **the United Kingdom will not extend consular assistance to EU citizens until it has received permission to do so and an agreement that any costs incurred or financial advances provided will be reimbursed by the respective Governments.**²⁷¹ Thus, in many cases, it is the Member

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.*

²⁷¹ Interview I. Jim Murphy, European Standing Committee, *op cit* at col. 13.

States of EU citizens that determine whether consular assistance is provided by the United Kingdom, because it is they who have to reimburse the financial costs. In addition, the United Kingdom normally retains the passport of individuals for security to ensure that financial advances, for example, are reimbursed. **One of the main methods of preventing Consular Shopping, from the perspective of the United Kingdom, is the establishment of ‘informal’ networks amongst the Embassies and Consular Posts of Member States to exchange information, monitor trends and develop strategies.**²⁷²

As discussed above, through Lead State frameworks the United Kingdom has concluded agreements with other Member States to allocate unrepresented EU citizens amongst themselves on the basis of resources, language, experience, culture and national ties. These agreements are ‘informal’ and are made, monitored and adjusted by consulates locally. Because these networks and agreements between the United Kingdom and other Member States are informal, the United Kingdom does not make data publicly available. Thus, the extent of Consular Shopping, and how these agreements are negotiated, the way in which they operate in practice and whether they are problematic, is not clear.

(xi) Summary

The wording of Article 23(1) TFEU (ex Article 20 EC Treaty), from the perspective of the United Kingdom, is not legally clear. Nor is it clear enough in practice for its nationals to understand. Under its interpretation of Article 23(1) TFEU, the United Kingdom *may* provide consular assistance to unrepresented EU citizens in third countries but it cannot provide ‘consular protection’ or ‘diplomatic protection’.²⁷³ Thus, consular assistance must be clearly distinguished from concepts of ‘consular protection’ and ‘diplomatic protection’. In addition, consular assistance under Article 23(1) TFEU must be distinguished from other consular services which the United Kingdom does not normally provide to non-British nationals. Consular assistance is based on published policy and not on legal right and is exercised as a matter of administrative discretion. Since the European Commission Green Paper and Action Plan were published in 2006 and 2007, respectively, the stance of the United Kingdom, as a matter of policy, has not changed in relation to Article 23(1) TFEU.²⁷⁴ The United Kingdom does not accept that the word ‘entitled’ contained within the definition of Article 23(1) TFEU is a ‘right’ or ‘legal obligation’ to provide consular assistance to unrepresented EU citizens.²⁷⁵ Article 23(1) TFEU merely provides unrepresented EU citizens with an ‘equal opportunity’ to access consular assistance. Thus, both the wording of the definition of Article 23(1) TFEU and its interpretation by the European Commission are considered to be ‘problematic’. **The United Kingdom will not engage in publicity campaigns to inform EU citizens of Article 23(1) TFEU until its definition and meaning has been legally clarified. The language of ‘consular and diplomatic protection’ and ‘entitlement’ hold a stronger guarantee than is actually available to EU citizens and could create a potentially confusing state of affairs for EU citizens.**

Consular services are delivered to British nationals under the doctrine of legitimate expectation. Consular policy can be judicially reviewed. The United Kingdom has the discretion to exercise consular assistance to British and non-British nationals (including

²⁷² Interview I. Jim Murphy, European Standing Committee, *ibid* at cols. 12-13.

²⁷³ *Italic added to indicate that consular assistance remains at the discretion of the United Kingdom Government.*

²⁷⁴ Interview I.

²⁷⁵ *Ibid.*

EC citizens) on a case-by-case basis.²⁷⁶ The United Kingdom is very rarely challenged legally for its consular services.²⁷⁷ The United Kingdom has never been challenged legally on the ground of Article 20 EC Treaty [now Article 23(1) TFEU] by an EU citizen.²⁷⁸ The main legal challenge has been in relation to the discretion by the United Kingdom not to exercise diplomatic protection over British residents, which it is not legally obligated to provide. A decision by the United Kingdom not to provide diplomatic protection to British nationals is judicially reviewable, unless the decision concerns national security, foreign policy or foreign relations. Consular assistance may be provided to EU citizens but only in exceptional cases and only where there is no Embassy, Consular Post or Honorary Consul present in the territory of the third country and after all other alternatives have been exhausted.

The United Kingdom does not believe that consular assistance should be provided by the European Commission. Thus, it has rejected proposals to establish 'European' Consular Posts and the concept of 'European Consuls' to provide a 'European' consular service to unrepresented EU citizens in both day-to-day and crisis situations.²⁷⁹ Similarly, the United Kingdom is not in agreement with the concept of 'common' consular support between Member States.²⁸⁰ The United Kingdom already co-locates with several Member States and is prepared, in certain circumstances, to share 'EU' consular premises with Member States to increase economic efficiency.²⁸¹ The United Kingdom will, however, resist attempts by the European Commission to undermine the primacy of Member States. The United Kingdom will continue to work with other EU partners to improve co-operation and co-ordination in the consular field. This is achieved primarily through Lead State frameworks and the negotiation of 'informal' agreements and 'informal' networks between the United Kingdom and other Member States. The United Kingdom believes that this is the most cost effective and flexible approach to providing consular assistance to unrepresented EU citizens. It is also the effective method to prevent 'Consular Shopping'.

In crisis situations, in particular, the United Kingdom will remain committed to Lead State frameworks.²⁸² **The United Kingdom is not prepared to change its stance in the next three years and rejects proposals for harmonisation in this area.**²⁸³ The United Kingdom does believe that the European Commission could provide financial, logistical and information support to Member States in crisis situations. It is not clear whether the United Kingdom has the ability and the capacity to continue to provide consular assistance to EU citizens in crisis situations in the future without increased support from the European Commission. In particular, the Foreign and Commonwealth Office is facing increasing financial constraints and is being forced to 'rationalise' its existing network of Consular Posts. The United Kingdom is enthusiastic to work alongside European partners and to work together in crisis response. The United Kingdom is also committed to trans-national networks of best practice and the training of Member States' consuls for crisis situations.²⁸⁴

²⁷⁶ Interview I.

²⁷⁷ Interview II.

²⁷⁸ *Ibid.*

²⁷⁹ Interview I.

²⁸⁰ Interview I.

²⁸¹ *Ibid.*

²⁸² *Ibid.*

²⁸³ *Ibid.*

²⁸⁴ *Ibid.*

(xii) List of important documents

Case Law

1.

Judgment - Queen's Bench Division (Divisional Court) - 12 October 2006 - R (on the application of Al Rawi and others) v Secretary of State for Foreign and Commonwealth Affairs and another [2006] EWCA Civ 1279

2.

Judgment - Court of Appeal (Civil Division) - 6 November 2002 - R (on the application of Abbasi and another) v Secretary of State for Foreign and Commonwealth Affairs and another [2002] EWCA Civ 1598

3.

Judgment - House of Lords - 22 November 1984 - Council of Civil Service Unions and others v Minister for the Civil Service [1984] 3 All ER 935

Other documents

4.

Guide - Support for British Nationals Abroad: A Guide - 2009 -

5.

Report - Consular Services Annual Report - 2009 -

6.

House of Commons European Standing Committee Debate - Diplomatic and Consular Protection - 23 June 2008 -

7.

House of Commons Select Committee on European Scrutiny Debate - Diplomatic and consular protection of Union citizens in third countries - 4 June 2008 -

8.

House of Commons Select Committee on European Scrutiny Debate - Citizenship of the European Union - 14 May 2008 -

9.

House of Commons Select Committee on European Scrutiny Report - Diplomatic and consular protection of Union citizens in third countries - 26 March 2008 -

10.

House of Commons Select Committee on European Scrutiny Report - Diplomatic and consular protection of Union citizens in third countries - 20 February 2008 -

11.

House of Commons Select Committee on Foreign Affairs Report - Diplomatic representation overseas - 7 November 2007 -

12.

House of Commons European Standing Committee Debate - Diplomatic and Consular Protection of Citizens in Third Countries - 15 May 2007 -

13.

House of Commons Select Committee on European Scrutiny Report - Diplomatic and consular protection of Union citizens in third countries - 28 March 2007 -

14.

House of Commons Select Committee on European Scrutiny Report - Diplomatic and consular protection of Union citizens in third countries - 21 February 2007 -

15.

UK response to the Commission's Green Paper on Diplomatic and consular protection of Union citizens in third countries - March 2007

Bibliography

- Amerasinghe, F. C. (2008). 'Diplomatic Protection'. Oxford: Oxford University Press, p. 1-346.

- Crawford, J. & Lowe, V. (Eds.) (1999). 'The British Yearbook of International Law'. Seventieth Year of Publication, vol. 70, Oxford: Clarendon Press, p. 526-532.

- Dugard, R. J. (2000). 'First Report on Diplomatic Protection', Fifty-Second Session of the International Law Commission, A/CN 4/506.
- Leigh, F. I. G (1971). 'Nationality and Diplomatic Protection'. *International Comparative Law Quarterly*, vol. 20, p. 453-450.
- Warbrick, C. (1988). 'Protection of Nationals Abroad'. *International Comparative Law Quarterly*, vol. 37, at p. 1002-1005.
- Warbrick, C. & McGoldrick, D. (2002). 'Diplomatic Representations and Diplomatic Protection'. *International Comparative Law Quarterly*, vol.51, p. 723-744.

Chapter Three: Comparative Analysis

1. Introduction

This Chapter makes a comparative analysis of the legislation and practice on consular protection and assistance of the 27 EU countries.

The comparative analysis is based on the 27 national Reports made available by the CARE Country Correspondents and on the legal documents included in the CARE database¹.

The Country Correspondents have followed a single template when drafting the national Reports, although the level of details given by the national Reports on their relevant domestic legislation and practice differs, sometimes considerably. This is due to several reasons: the different level of access to the relevant information, the different degree to which the national legislation covers the field of consular protection and assistance (in certain countries the relevant norms do not go further than what is already established under the Vienna Convention, whilst in other EU countries, the relevant norms are scattered in different national acts with different legal force), no uniform possibility of interviewing the officials of the competent Ministries and/or national consular and diplomatic officials mainly due to the varying availability of these officials to provide relevant information. In addition, it should be mentioned that in certain EU countries the legal literature has paid little attention to the topic of consular protection and assistance, particularly in the case put forward by Art. 23 TFEU².

Many national Reports pointed out, more or less, that the level of publicly available information on consular assistance and protection provided by the EU countries is rather low. It is not surprising since all of the Member States, in a lesser or higher degree, approach the field of consular protection and assistance as falling under their sovereign powers.

This Chapter follows the structure of the national Reports; its Sections include: hypertext index tables with direct links to the relevant information from the national Reports and, if useful, tables including the summarised relevant information, and/or synthesis of the most controversial information gathered by the national Reports.

¹ www.careproject.eu/database

² Not only has the legal academia of the Member States paid little attention to the national legislation and practice on consular and diplomatic protection of the Member States' own and EU citizens, but also, according to S. Stavridis and C. Thouez, the entire field of international protection of citizens was not shown any more interest. See S. Stavridis and C. Thouez, *The International Protection of the EU citizen*, in Problems and Prospects in Citizenship and Governance in the EU, edited by R Bellamy and A Warleigh, pp. 163-180, Continuum studies in citizenship, 2001. This is of course understandable taking into account that EU citizenship is not separate from the Member States' nationality and, therefore, the issue of the international protection of the EU citizen was usually translated as only being international protection given by the Member States.

2. Legal framework

2.1. International law

Section 2.1 of the national Reports focuses on highlighting the international norms relevant for the topic of consular protection and how they are implemented by all of the EU countries. In particular, the multilateral international Treaties concluded within the UN and Council of Europe frameworks and other multilateral and bilateral conventions concluded between the EU countries and between the EU countries and third States are analysed.

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 1: International law

2.1.1. General multilateral conventions

There are three main multilateral Conventions regulating the field of consular protection and assistance:

- (i) the Vienna Convention on consular relations [Signatories: 48. Parties: 173] (with its two Optional protocols on the Compulsory Settlement of Disputes [Signatories: 38. Parties: 48] and on the Acquisition of Nationality [Signatories: 19. Parties: 39]) – entered into force on 19 March 1967 –;
- (ii) the Strasbourg Agreement on the Transfer of Corpses of 26 October 1973 (ETS 80) – entered into force on 11 November 1974 – [22 ratifications];
- (iii) the European Convention on the abolition of legalisation of documents executed by Diplomatic Agents or Consular Officers (ETS 63) – entered into force on 14 August 1970 – [20 ratifications].

Table 1 presents the status of the aforementioned Conventions in each of the EU countries.

Moreover, 11 EU countries (**Belgium, Germany, Denmark, France, Italy, the Netherlands, Austria, Portugal, Romania, Czech Republic and Slovakia**) are parties to the [1937 Berlin Agreement concerning the conveyance of corpses](#). **Germany, Denmark, Italy, Romania** and the **Czech Republic** are not parties to the Agreement on Transfer of Corpses, however, they are parties to the 1937 Berlin Agreement.

The [European Convention on Consular Functions \(ETS 61\)](#)³ has not yet entered into force. As of 16 June 2010, only 4 States (including three EU countries: **Greece, Portugal and Spain**) have ratified the Convention, thus, the threshold of 5 ratifications necessary for the entry into force of the Convention has not yet been reached.

³ The Convention sets out rules on the consular relations between the Member States, while taking account of the Vienna Convention on Consular Relations of 1963. It defines the general functions of consuls to protect the rights and promote the interests of their nationals and their country within their district. It also lays down rules for the issue or delivery of documents, the administration of estates and assistance to shipping. The Protocol relating to the protection of refugees (ETS 061A) sets out provisions concerning refugees in the meaning of Art. 48 of the Convention. According to the provisions of the Protocol relating to the consular functions in respect of civil aircraft (ETS 061B), the provisions of Arts. 28 to 41 of the Convention apply also to the civil aircraft, as far as they are likely to be applied.

Table 1: Status of international multilateral conventions on consular protection with respect to EU countries

	<u>Vienna Convention on consular relations</u>	<u>Optional Protocol on the compulsory settlement of disputes</u>	<u>Optional Protocol on the acquisition of nationality</u>	<u>Agreement on the transfer of corpses (ETS80)</u>	<u>European Convention on the abolition of legalisation of documents ... (ETS 63)</u>
	<i>Ratification¹</i>	<i>Ratification²</i>	<i>Ratification³</i>	<i>Entry into force⁴</i>	<i>Entry into Force⁵</i>
AT	12.6.1969	12.6.1969		11.8.1978	10.7.1973
BE	9.9.1970	9.9.1970	9.9.1970	26.10.1981	
BG	11.7.1989	11.7.1989	11.7.1989		
CY	14.4.1976			11.11.1975	14.8.1970
CZ	22.2.1993				25.9.1998
DK	15.11.1972	15.11.1972	15.11.1972		
EE	21.10.1991	21.10.1991	21.10.1991	7.1.2002	
FI	2.7.1980	2.7.1980	2.7.1980	15.3.1989	
FR	31.12.1970	31.12.1970		10.6.2000	14.8.1970
DE	7.9.1971	7.9.1971	7.9.1971		19.9.1971
EL	14.10.1975			8.5.1983	23.5.1979
HU	19.6.1987	8.12.1989			
IE	10.5.1967				9.3.1999
IT	25.6.1969	25.6.1969	25.6.1969		19.1.1972
LV	13.2.1992			6.1.1997	
LT	15.1.1992			11.9.2009	
LU	8.3.1972	8.3.1972		21.11.1983	30.6.1979
MT	10.12.1997				
PL	13.10.1981				12.4.1995
PT	13.9.1972			8.8.1980	14.3.1983
RO	24.2.1972	19.9.2007			
SK	28.5.1993	27.4.1999		20.2.1996	
SI	6.7.1992			6.12.1998	
ES	3.2.1970			19.4.1992	11.9.1982
SE	19.3.1974	19.3.1974	19.3.1974	5.11.1982	28.12.1973
NL	17.12.1985	17.12.1985	17.12.1985	25.12.1975	10.10.1970
UK	9.5.1972	9.5.1972			14.8.1970

Sources:

1: United Nations (<http://treaties.un.org/doc/publication/mtdsg/volume%20i/chapter%20iii/iii-6.en.pdf>)2: United Nations (<http://treaties.un.org/doc/publication/mtdsg/volume%20i/chapter%20iii/iii-8.en.pdf>)

3: United Nations (<http://treaties.un.org/doc/publication/mtdsg/volume%20i/chapter%20iii/iii-7.en.pdf>)

4: Council of Europe
(<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=080&CM=8&DF=16/04/2010&CL=ENG>)

5: Council of Europe
(<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=063&CM=8&DF=16/04/2010&CL=ENG>)

2.1.2. Other multilateral and bilateral agreements on mutual cooperation and assistance on consular protection

This sub-section aims to present the types of agreements concluded by the EU countries in the field of mutual cooperation and assistance on consular protection.

Most of the national Reports mention that their EU countries have concluded a certain number of Treaties on consular protection or having provisions on consular relations with third States. The majority of these Treaties follow the general structure of the Vienna Convention on consular relations, whose only provisions with direct link on consular protection are Arts 5(a), (d), (e), (g), (h) and Art. 8, the latest Article of particular importance for this sub-section. The material scope of the foregoing Treaties are limited to regulating the proper functioning of the consular services of one Contracting Party in the territory of the other Contracting Party, e.g., containing rules on the rights, duties, privileges and immunities of consular staff and consular protection given by the consular officials only to the citizens of the sending State.

As mentioned above, Art. 8 of the Vienna Convention is of particular relevance for this sub-section, which plans to find out, *inter alia*, whether the Member States have concluded Treaties with third States providing the extension of their exercise of consular protection also to other Union citizens than their own citizens⁴, or to citizens of other third States. According to the information provided by the national Reports there is a limited number of Treaties concluded by the EU countries with third States that make reference to the former type of consular protection. These Treaties are concluded by **Italy**: the bilateral agreements signed by Italy after the entry into force of the Maastricht Treaty are: the Conventions with Ukraine in 2003 (Art. 62), Republic of Moldova in 2000 (Art. 61), Georgia in 2002 (Art. 60), Great People's Libyan Arab Jamahiriya Socialist in 1998 (Art. 2) and [Russian Federation in 2001](#) (Art. 37); and **Portugal**: the [Consular Convention between Portugal and the Russian Federation \(2001\)](#), Art. 36 (5). In addition, there are other multilateral or bilateral Treaties concluded by the EU countries with third States providing for the exercise of consular protection to the citizens of the other Contracting Parties, which, however, are not only EU countries but also third countries benefiting of the exercise of consular functions by the Contracting EU countries: the **Nordic Cooperation Treaty** of 23 March 1962 concluded between **Denmark, Finland, Iceland, Norway and Sweden**; the agreement on Consular Cooperation concluded by **Portugal** with the States that are part of the **Portuguese Speaking Countries Community**⁵, signed in Lisbon on 24 July 2008. The agreement between **Austria and Switzerland on Cooperation in consular matters** of 3 September 1979 which entered into force on 1 January 1980; the agreement concluded by **Bulgarian and Montenegrin MFA** in the field of consular protection and visa; and

⁴ The Treaties concluded by the EU countries in this field and the explanation of the other Member States that have not concluded such agreements, nor amended their existent agreements will be addressed in more detail in [Section 3.1.](#)

⁵ The Member States of the Portuguese Speaking Countries Community are Portugal, Angola, Brazil, Cape Verde, Guinea Bissau, Mozambique, Sao Tomé and East Timor.

the **Consular Convention between the Republic of Lithuania and the Russian Federation**, on the basis of which the Contracting States can provide assistance to the citizens of the other State Party.

In addition to agreements concluded with third States, certain EU countries concluded also agreements between themselves in the field of mutual cooperation and assistance on consular protection. Usually these agreements are concluded between the EU countries having a long and close historical and language tie, e.g., among the Benelux countries, certain of the Central and Eastern European countries, the Baltic States or those EU countries sharing the same language, which determined them to enter into a more specific and close cooperation and assistance. Thus, the scope of these agreements is not limited to giving assistance to the citizens of the sending State in the receiving State, but goes further and includes the type of assistance mentioned by Art. 8 of the Vienna Convention on consular relations. Therefore, according to the national Reports, certain EU countries engage themselves to provide consular assistance and protection to the citizens of another EU country in a third State where the latter EU country is not represented. These agreements are based on international law and the national laws of the Contracting Parties (e.g., the explicit reference in the Austrian-Hungarian Agreement).

It has to be distinguished that as long as the material scope of the consular protection provided in these Treaties is similar to the material scope of the right to consular protection already ensured under EU law, and Decision 95/553/EC, then these Agreements are not adding new rights under the existing consular protection, thus they are of limited interest for the purpose of the present Section. On the other hand, if the material scope of the consular protection provided by these Agreements is wider than under the EU law and, then these inter-EU countries agreements are of significant relevance as they add new rights to the material scope of the Union right to consular protection.

On the basis of Arts. 23 TFEU and 46 of the EU Charter, even an EU citizen that is not a national of one of the EU countries parties to this type of agreements should enjoy the type of consular protection exercised under the foregoing type of international agreements. Provision of a wider consular protection to the citizens of the Contracting Union country but not to other Union citizens from other unrepresented Union countries would amount to overt discrimination among the Union citizens.

In light of the information provided by the national Reports, it seems that certain of the agreements concluded between the EU countries provide for a list of consular functions wider than the one established by Art. 5(1) of Decision 95/553/EC.

According to whether the agreement on consular matters was concluded before or after the Contracting Parties' accession to the Union, the following two categories of agreements can be identified:

(i) Agreements concluded before the Contracting Parties accession to the Union which lay down a list of consular functions wider than under Art. 5(1) of Decision 95/553/EC:

- The Helsinki Treaty⁶;
- The Baltic Treaty⁷.

(ii) Agreements concluded after the Contracting Parties accession to the European Union which provide a list of consular functions wider than under Art. 5(1) of Decision 95/553/EC:

⁶ See Art. 34 of the Helsinki Treaty.

⁷ See Art. 3 of the Baltic Treaty.

- The Convention on consular cooperation between the Grand-Duchy of Luxembourg and the Kingdom of Belgium of 30 September 1965⁸;
- The Agreement between the Federal Minister for Foreign Affairs of the Republic of Austria and the Foreign Minister of the Republic of Hungary entered into force on 20 December 2005⁹.

In light of the current understanding of consular assistance as a common minimum standard assistance by the EU countries, it has to be assessed whether the national legislations of the Member States, which implement both the aforementioned regional or bilateral treaties and EU law, provides different consular protection treatment of non-national EU citizens, depending of whether they are citizens of the Member States Contracting Parties to these Treaties or other non-national EU citizens.

Some remarks on the conformity of the regional and bilateral agreements on consular protection/assistance concluded by the Member States before and after their accession to the Union with the European legal framework on consular protection are presented here below.

• **The Baltic Treaty** – a pre-accession agreement

The Baltic Agreement was concluded in 1999. The Baltic States – Estonia, Latvia and Lithuania – became members of the Union in 2004 (fifth enlargement) after fulfilling the Copenhagen criteria, among which also the legal requirement of acceptance of EU law. As to the purpose of our research, EU law at the point of the Baltic States' accession included ex-Arts. 12 and 20 of the EC Treaty which laid down an individual right not to be discriminated based on nationality in favour of own nationals but also other non-national EU citizens (ex Art. 12 EC Treaty) in the field of consular and diplomatic protection. According to Decision 95/553/EC, the European field of consular protection was limited starting with 1995 to the following mandatory cases of distress: death, serious accident or serious illness, arrest or detention, victims of violent crime, relief and repatriation of distressed citizens (in case of natural disasters, civil unrest, armed conflict or other crises)

The Baltic Treaty however was not limited to the consular assistance cases provided in Art. 5(1) of Decision 95/553/EC, but according to Art. 3(g) included also notary functions¹⁰. At the moment of accession the relation between the national legislation implementing the Baltic Treaty in the three Baltic countries and the European law on consular and diplomatic protection was not clarified and the Baltic Treaty was left into force as such in the three already Member States of the Union. Decision 95/553/EC does not preclude the enlarged provision of consular protection under the Baltic Treaty, according to Art. 5(2) of Decision 95/553/EC, the Member States may go beyond the mandatory list of circumstances laid down in Art. 5(1). However, there is an EU law requirement for the Member States to provide the same level of consular protection to all non-national EU citizens according to ex-Art. 12 EC Treaty (now Art. 18 TFEU). Assessing the national legislation of the three Baltic Member States in order to see whether they provide in their national legislation the same extended consular protection in regard to all EU citizens, it can be observed that Estonia, Latvia and Lithuania, when implementing ex- Art. 20 EC Treaty and Decision 95/553/EC, have followed the extended consular protection of Art. 5(2) of Decision 95/553/EC:

⁸ Arts. 2-9 set out a long list of situations where the consular and diplomatic officials of Belgium provide consular assistance to the citizens of Luxembourg, eg. registration of citizens of Luxembourg, notarial services, representation and help before the administrative authorities from the receiving State.

⁹ The scope is decided on a case-by-case basis between both States.

¹⁰ Art. 3(g) of the Baltic Treaty provides: “*acting as notary in capacities and performing certain functions of an administrative nature, in conformity with the laws and regulations of the receiving State.*”

Estonia – Section 53 of the Consular Statute: *Provision of consular assistance to citizens of Member States of European Union (1) A representation of the Republic of Estonia protects the interests of a citizen of a Member State of the European Union if the Member State of the European Union where the person is a citizen does not have a representation in the receiving State and if the receiving State has no objections thereto. (2) At the request of a Member State of the European Union, consular assistance shall be provided if a citizen of the country is in an emergency, has been detained or is serving sentence, also in the event of death or other unforeseeable and extraordinary circumstances.*

Latvia – Art. 11(2) of Consular Statute: *consuls should assist and protect personal, material and other rights and interests of those EU citizens who have no consular representative in a specific area.*

Lithuania – Arts. 41(1) and 42 of Consular Statute Law: *Article 41 (General Provisions on the Provision of Consular Assistance to Citizens of the European Union). (1) Every citizen of the European Union being in the territory of a third country in which the State of which he is a national is not represented shall have the right to receive consular assistance from a diplomatic mission or consular post of the Republic of Lithuania under the same conditions as citizens of the Republic of Lithuania. Article 42 (Conditions for the Provision of Consular Assistance to Citizens of the European Union). (1) In accordance with the provisions of this Chapter, consular assistance shall only be provided if all of the following conditions are fulfilled:[...](2) the citizen of the European Union has found himself in a complicated situation in a State which is not a member of the European Union and is in need of consular assistance;*

Therefore, the broad wording of the national legislation of Estonia, Latvia and Lithuania seems to permit the exercise of notarial functions, which under the Baltic Treaty was limited only to the three Member States, to all non-national EU citizens. This is the theoretical framework, whether the three Baltic States follow in practice this extended consular protection towards all non-national EU citizens, or only the limited Art. 5(1) of Decision 95/553/EC, or the differentiated Baltic Treaty towards the citizens of the Baltic States and the EU law framework towards the other non-national EU citizens is not clear as there is not sufficient information provided by the national Reports in order to conclude on this issue.

• **The Helsinki Treaty** – pre-accession agreement

The agreement is concluded between now three Member States (Denmark, Finland, Sweden) and two EEAS countries (Iceland and Norway). In light of the research purpose of the CARE project, only the relation between the now three Member States is of relevance. Art. 351 TFEU, even if applying to the relation between the national legislation implementing this Treaty (an international agreement concluded by the Member States before their accession to the Union with third countries) and the EU law requirements of the Member States, is not relevant for the analysis of the principle of non-discrimination based on nationality, as Art. 351 TFEU relates to the benefits and obligations between the Member States and third countries, while the Arts. 18 and 23 TFEU relate to the relation only between the Member States.

What is of relevance for this section is whether the national legislation allows for differentiated treatment to be applied by the Member States that are Contracting Parties to this Treaty to non-national EU citizens. The specific wording of Art. 34 of the Helsinki Treaty prohibits though the possibility of differentiated treatment between the non-national EU citizens based on national legislation implementing the Helsinki Treaty and national legislation implementing the EU law. According to Art. 34 of the Helsinki Treaty, consular assistance is provided by the consular and diplomatic officials of the Contracting Parties to the extent that it is compatible with their duties. Therefore the material scope of the consular protection/assistance under the Helsinki Treaty does not go further than what the national legislations of the Member States provide. According to the national Reports, the three Scandinavian Member States have different national legislation as to the circumstances in which consular protection is conferred to Union

citizens: Denmark implemented Decision 95/553/EC by way of instructions internal to the Ministry of Foreign Affairs which are not public, therefore the exact material scope of consular protection remains closed to the public; Finland follows the limited list of consular protection circumstances laid down in Art. 5(1) of Decision 95/553/EC; Sweden follows the extended consular protection scope of Art. 5(2) Decision 95/553/EC by going beyond a mere list of distress situations.

According to the current legislative framework the Member States can adopt different levels of consular protections as long as the principle of equal treatment is respected.

• **Agreement between Belgium and Luxembourg on consular assistance** – post accession agreement

According to Arts. 2-9 of the Agreement, Belgian consular and diplomatic officials can provide extended consular protection to unrepresented citizens of Luxembourg: e.g., registration of the Belgian citizens, notarial services, representation and help before the administrative authorities from the receiving State. According to the national Report on Belgium, the Belgian State has a very strict approach to consular protection which is given both to own nationals and EU citizens in exceptional circumstances, and as regards the EU citizens only in the strict situations of Art. 5(1) of Decision 95/553/EC. Though the EU citizens do not have a right to receive consular protection in these circumstances, as the Belgian State enjoys wide discretion under the approach of considering consular protection a matter of national policy. Therefore, according to the national legislation and policy it seems that there is a differentiation between the consular protection that citizens of Luxembourg receive and consular protection that other non-national EU citizens can receive, the former being advantaged. However there is not enough information to conclude whether, in practice, Belgium follows such a differentiation in treatment or whether it is only a theoretical issue. Regardless, the legislation should be brought into line with Arts. 18 and 20(2)(c) TFEU by providing the same consular protection treatment for all non-national EU citizens.

• **Agreement between the Federal Minister for Foreign Affairs of the Republic of Austria and the Foreign Minister of the Republic of Hungary on cooperation of foreign representatives** – post-accession agreement

The material scope of consular protection carried out under this Agreement is similar to the one established under the VCCR which is wider than under the mandatory EU law framework established by Art. 5(1) Decision 95/553/EC. According to the information provided by the national Reports on Austria and Hungary it is not clear whether the Austrian and the Hungarian consular and diplomatic authorities confer in practice differentiated consular protection treatment to the Hungarian/ Austrian citizens from the other non-national EU citizens. If so, the practice will be contrary to Arts. 18 and 20(2)(c) TFEU and will have to be brought in line with the EU law requirements.

In addition, several other verbal or informal agreements have been concluded by the EU countries between themselves after their accession to the European Union in the field of consular protection¹¹. The consular functions that can be exercised under these agreements are not publicly available, they are usually established on a case-by-case basis, which means that in certain circumstances the exercised consular functions can be wider than the list provided in Art. 5(1) of Decision 95/553/EC.

A second type of agreement concluded between the EU countries do not concern the subject matter of Art. 23 TFEU and of Decision 95/553/EC, but that of Art. 35 TEU (ex-Art 20 TEU). Therefore, according to the national Reports, certain EU countries

¹¹ For instance, the verbal agreement on consular assistance between Hungary and Lithuania of 30 May 2007 whereby Hungary provides consular assistance in certain third countries to Lithuanian citizens; Luxembourg seems to have informal arrangements with France and Germany whereby the latter EU countries provide consular assistance on a case-by-case basis to citizens of Luxembourg.

have concluded among themselves: burden-sharing agreements¹², agreements on mutual representation, although this type of agreements may also have provisions on consular protection and assistance, pooling resources for creating co-locations under a formal or informal agreement¹³, and agreements on handling visas.

A brief overview of the multilateral and bilateral agreements on mutual cooperation and assistance on consular protection concluded by the EU countries is proposed here below.

Austria

Formal agreements on consular and diplomatic assistance exist with Hungary and Switzerland.

The [Agreement between the Austrian Minister of Foreign Affairs and the Hungarian Minister of Foreign Affairs concerning co-operation of foreign representations entered into force on December 20, 2005](#) establishes the principle of co-operation between the diplomatic and consular representations of both countries: in countries where one State is not represented the other State can exercise these functions.

An exchange of notes has specified the assistance between Austria and Switzerland for certain countries: Libreville - Gabun, Kuta - Indonesia/Bali, Niamey - Niger, N'djamena - Chad.

Informal agreements on consular protection exist also with Slovenia and Croatia.

With some EU countries, representation agreements for visas have been established, e.g., Malta.

Belgium

Belgium and Luxembourg have a long history of consular cooperation in the event that Luxembourg has no consulate available in a certain region. A formal agreement on consular and diplomatic assistance exists since 1965 between Belgium and Luxembourg. On the basis of this Convention citizens of Luxembourg can receive consular assistance from Belgian consular officials in States where Luxembourg is not represented.

The Convention was published in the Belgian Official Journal (*Moniteur belge*) on 8 December 1966. Luxembourg has ratified the Convention by adopting the Law of 16 August 1966 “[portant approbation de la Convention entre le Grand-Duché de Luxembourg et la Royaume de Belgique relative à la coopération dans le domaine consulaire, signée à Bruxelles le 30 septembre 1965](#)”. This Convention is still in force.

Cyprus

There is one Agreement, concluded between the Republic of Cyprus and Greece, for the representation of the Republic of Cyprus in Saudi Arabia. The Agreement has provisions on the issuance of visas for nationals of Cyprus. This Agreement has not yet entered into force as certain details are still under discussion.

¹² A good example is the 1965 Agreement between the Netherlands and Belgium, where the Netherlands handles visa applications for Belgium in the 28 of its foreign missions; Belgium in turn represents the Netherlands in 10 third countries.

¹³ As pointed out in the national Reports on the **Czech Republic, Hungary and Austria**. In addition co-location premises were aimed to be set up also between some of the EU countries present in a third country and the Community - see the memorandum concluded between some of the EU countries and the Community, on 18 April 1994, concerning the construction for their diplomatic missions in Abuja of a joint complex of embassies using joint support services (“the Abuja II project”).

**Czech Republic**

An international Treaty on consular assistance exists between the Czech Republic and its close neighbour Slovakia: *Ujednání mezi Ministerstvem zahraničních věcí České republiky a Ministerstvem zahraničních věcí Slovenské republiky o spolupráci v oblasti konzulárních služeb* ([Agreement between the Ministry of Foreign Affairs of the Czech Republic and the Ministry of Foreign Affairs of Slovakia on Cooperation in the Field of Consular Services](#)). The Agreement has been in force since 4 February 1993, only over a month after the dissolution of Czechoslovakia and it has the format of an inter-ministerial agreement. It is based on reciprocity and good services provided to the citizens of the other Contracting State in case of accidents, distress and need in the third State where only one of the two Contracting States is represented. As for the consular documents from the former Federal Ministry of Foreign Affairs, they are provided mutually upon request. Apart from the assistance to their own citizens, both States have agreed to provide common praxis towards the citizens of the other State. Summing up, the main goal of this Agreement is to carry on the consular assistance formerly conducted by the (former) Federal Czechoslovak Republic. The material scope of the 1993 Agreement was subsequently clarified and extended on 7 March 2003, when the Agreement was amended by way of an exchange of diplomatic notes. The amendment from 2003 further specifies that the cases of assistance shall also include necessary assistance during evacuation in situations where the lives or health of citizens of the other unrepresented State may be in danger.

In addition to the above mentioned Convention with Slovakia, the Czech Republic has launched also other forms of consular cooperation with other Member States of the European Union. The Czech Republic pools resources with Hungary and Austria in Podgorica, Montenegro. There is no formal international treaty concluded between these EU countries for the purpose of burden sharing. Such practice is now planned also for other missions in third countries with Slovakia and Poland¹⁴.

**Denmark**

Denmark is a party to the Treaty of Cooperation between Denmark, Finland, Iceland, Norway and Sweden ([Helsinki Treaty](#)) of 23 March 1962. Pursuant to Art. 34 of the Helsinki Treaty, a citizen of one of the Contracting Parties that is in distress outside the Nordic States can turn for assistance to the mission of any of the other Nordic country if the sending States has no mission available on site.

Denmark has concluded also a co-location agreement with Finland and Sweden for Indonesia - Jakarta, Tanzania - Dar es Salaam and Tunisia - Tunis. A common administrative centre with other EU countries is established in Moldova.

**Estonia**

On 5 February 1999 in Vilnius, Estonia has concluded a [trilateral Agreement](#) on Consular Assistance and Cooperation (entered into force on 5 September 1999) with Latvia and Lithuania in the field of consular protection and assistance, before all three States became European Union's Member States. The Parties agreed to provide consular assistance to the citizens of the other Contracting Parties in third countries where the sending States is not represented. The Baltic Agreement makes express reference to the principle established in Art. 8 of the Vienna Convention on consular relations and states that assistance can be granted only if the receiving State does not object to this

¹⁴ The current difficult economic situation and the resulting budget cuts explain the focus of the Czech Republic on pooling resources arrangements with other EU countries.

assistance. The Baltic Treaty states that *“assistance should be provided in conformity with the rules and regulations in force both in the assisting State and in the assisted State”* (Art. 2 para. 2).

Finland

Finland is a party to the [above mentioned](#) Helsinki Treaty.

France

[France agreed on a Convention with Germany](#) in order to facilitate common settlements of diplomatic missions and consular offices (signature: 12 October 2006; ratification: 1 March 2008).

Through this Framework Agreement, France and Germany have agreed to install some of their diplomatic missions or consular posts in common premises. The premises of those establishments include "shared" areas and "exclusive" areas, the latter being assigned to the exclusive use of a diplomatic mission or consular post. The Framework Agreement requires, firstly that the Contracting Parties make clear that the shared premises are home to two separate diplomatic missions or consular posts and, secondly, that the existence of a special Franco-German cooperation be properly highlighted. Finally, the Framework Agreement defines the legal framework for the allocation of costs between the two diplomatic missions or consular posts, common establishments in co-ownership, common establishments in co-rental and rentals between the Parties.

Greece

As already mentioned, an agreement on consular representation of the Republic of Cyprus in Saudi Arabia in relation to the granting by Greek consular/diplomatic missions of visas to Cypriot nationals exists ([Agreement between the Hellenic Republic and the Republic of Cyprus, Law 3324/2005, Government Gazette A 67/2005](#)).

Hungary

Hungary and Lithuania came to a verbal agreement on consular assistance in Vilnius on 30 May 2007. According to this agreement, Hungary provides consular assistance to Lithuanian citizens in the following countries: Cyprus, South Africa, United Arab Emirates, Indonesia, Iran, Jordan, Cuba, Lebanon, Macedonia, Montenegro, Pakistan, Saudi Arabia, Serbia, Singapore, Syria, Taiwan, Thailand and Vietnam. Hungarian consular officers work in close cooperation with the Lithuanian Ministry of Foreign Affairs and the honorary consuls in order to fulfil the objective of their Agreements. On 1 April 2008 Hungary and Lithuania formalised their verbal agreement by signing an Agreement on Mutual Representation in Processing Visa,¹⁵ which is however limited to the type of consular cooperation in the form of processing visas.

Latvia

Latvia is a party to the already mentioned [Baltic Agreement](#).

Lithuania

Lithuania is a party to the already mentioned [Baltic Agreement](#).

Lithuania concluded an agreement with Hungary on consular protection in 2007. Lithuania provide consular assistance to Hungarian nationals in the following countries:

¹⁵ See http://www.mfa.gov.hu/kulkepviselet/IR/en/en_Hirek/Schengen_visas_for_Lithuania.htm.

Cyprus, South Africa, United Arab Emirates, Indonesia, Iran, Jordan, Cuba, Lebanon, Macedonia, Montenegro, Pakistan, Saudi Arabia, Serbia, Singapore, Syria, Taiwan, Thailand and Vietnam.

On the basis of several separate agreements concluded between 1999 and 2000, the Republic of Poland agreed to provide consular assistance to the citizens of the Republic of Lithuania in the following countries: Algeria, Tunisia and Morocco. All three Agreements establish that Poland shall provide consular assistance to citizens of Lithuania in cases of death, serious accident or illnesses, arrest, detention or imprisonment, and shall also provide assistance to victims of violent crimes and to distressed citizens. Lithuania transfers an agreed amount of money to special accounts of Poland in order to ensure that consular functions will be performed on behalf of Lithuania. These agreements were concluded before the accession of Lithuania to the EU. Once past of the Union, the conclusion of this type of bilateral agreements became irrelevant for Lithuania, according to the national Report, as consular assistance in the situations laid down by the aforementioned Agreements is regulated by the current EU Treaties.

The [Consular Convention between the Republic of Lithuania and the Russian Federation](#) includes the possibility to exercise consular assistance to the unrepresented citizens of the other Contracting Party in the receiving States.

Luxembourg

Luxembourg is party to the following bilateral conventions:

- Bilateral Convention in the field of consular cooperation between the Grand-Duchy of Luxembourg and the [Kingdom of Belgium](#) [see more on this agreement under the [section on Belgium](#)];
- Treaty between the Grand-Duchy of Luxembourg and the [Kingdom of the Netherlands](#) of 24 March 1964 concerning cooperation in the field of diplomatic representation. According to Art. 1 of this Treaty, in case the Kingdom of Luxembourg is not represented in a third State, its representation and the protection of the interests of its citizens will be ensured by the diplomatic missions of the Netherlands. Art. 7 of the same Treaty deals with the financial reimbursement of the costs incurred by the Netherlands when providing assistance to the citizens of Luxembourg. Accordingly, Luxembourg will reimburse the Netherlands at the end of each year.

Cooperation in the field of consular protection exists also between Luxembourg and France, and between Luxembourg and Germany, when necessary and on a case-by-case basis.

Malta

Malta has concluded the following Representation Agreements:

- Representation Agreement with Austria signed on 7 May 2004. Austrian diplomatic and/or consular missions represents Malta's interests in Albania – Tirana, Gjirokastra, Korutsa, Scutari, Valona, Bosnia and Herzegovina – Sarajevo, Brazil – Brasilia, Belém, Belo Horizonte, Curitiba, Porto Alegre, Recife, Rio de Janeiro, Salvador-Bahia, Santos, São Paulo;
- Representation Agreement with Italy signed on 27 October 2005. Italian diplomatic and/or consular missions represents Malta's interests in: Afghanistan-Kabul, Angola – Luanda, Benguela, Azerbaijan – Baku, Bahrain – Manama,

Bangladesh – Dhaka, Belarus – Minsk, Brest, Hrodna, Bolivia – Vitebsk, La Paz, Santa Cruz de la Sierra, Brunei - Seri Begawan;

- Representation Memorandum of Understanding with Spain signed on 17 January 2008;
- Representation Memorandum of Understanding with France signed on April 2009. French diplomatic and consular missions represent Malta's interests in Algeria – Algiers, Annaba, Oran, Benin – Cotonou.

On 9 December 2008, Cyprus and Malta entered into an agreement for joint premises of their diplomatic missions in Tel Aviv (Israel) and Ramallah (PNA – Palestinian Territories)

Malta is part of the Schengen area. Thus, diplomatic missions issue Schengen visas and there are arrangements with Italy and Austria for these States' diplomatic representations to issue Schengen visas on Malta's behalf in third countries where Malta does not have a representation.

Poland

An agreement with Hungary was concluded in the form of exchange of diplomatic notes of 8 June 2000 (Polish note) and 2 January 2001 (Hungarian note), that means still before the accession of Poland and Hungary to the EU. The agreement provides that Polish consuls will assist Hungarian nationals in the two third countries, Belarus and North Korea, in which Hungary has no representation. In special situations, it covers the arrival of the Hungarian consul from a neighbouring country and providing assistance to Hungarian citizens in the premises of the Polish consulate.

Portugal

Portugal concluded some agreements with third States, particularly those that are part of the Portuguese Speaking Countries Community (CPLP). The latest Agreement concluded between the Members of the CPLP is an Agreement on Consular Cooperation ([Acordo de Cooperação Consular entre os Estados membros da Comunidade dos Países de Língua Portuguesa](#)), signed in Lisbon on 24 July 2008. This agreement sets the framework for consular cooperation in terms similar with the consular cooperation under Decision 95/553/EC, so that Portuguese consular missions will grant consular protection to citizens of other CPLP Member States in third countries where said CPLP Member States are not represented. However, the Agreement has not yet entered into force nor has it been published in the Portuguese Official Journal.

Slovakia

Slovakia signed an Agreement with the Czech Republic on Cooperation in the Area of Consular Services on 4 February 1993, subsequently amended in 2003 [see more on the material scope of this Agreement under the [Section on the Czech Republic](#)].

Slovenia

Bilateral [agreements](#) in the field of representation in visas procedures were concluded with a number of other Member States (e.g., Italy, Hungary, Austria, Poland, France, Belgium etc.).

Before the Slovenia's accession to the EU, diplomatic and consular assistance to Slovenian nationals was regularly provided by Austrian representations in third

countries under a bilateral agreement concluded between Slovenia and Austria in 1991 (even before Slovenia’s international recognition by the EU Members States). The financial means necessary for such assistance were provided by Slovenia. The agreement was concluded without a termination date and was never denounced by any of the Parties, however since 2004 (Slovenia’s membership in the EU) according to an informal agreement, it has not been used in practice as a legal basis for the assistance that Austrian consular/diplomatic representations still provide to Slovenian nationals in need.

Furthermore, in October, 2007, Slovenia established a Common Visa Application Centre (CVAC) in Podgorica (Montenegro) within the premises of the Slovenian embassy. There are already 11 Member States participating in this CVAC. Slovenia also participates in the CVAC in Chisinau (Moldova) operating within the Hungarian embassy.

Slovenia also provides consular assistance to Macedonian citizens in need in Argentina and Japan based on the arrangement between the MFA of Slovenia and the MFA of Macedonia.

Furthermore, Slovenia concludes formal and informal burden-sharing agreements with other EU countries¹⁶.

 Sweden

Sweden is a party to the [above mentioned](#) Helsinki Treaty.

2.2. Transposition of international law into national law

This sub-section of the national Reports clarifies the relation between international law and domestic law, in particular the procedure according to which the norms of international law apply within the national legal order. More information on the specific situation in each of the EU countries can be found by following the links in the subsequent hypertext index table.

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 2: Transposition of international law into national law

2.3. Implementation of European law into national law

This sub-section of the national Reports focuses on the relation between EU law and domestic legislation.

Particular attention is given to the ways of national implementation of relevant EU provisions on consular protection¹⁷.

¹⁶ Informally **Slovenia** endeavours to agree with other EU countries on the burden-sharing when the need arises in each particular case in the absence of a formal agreement. An example would be the agreement reached with Germany in Phnom Penh in February 2009. This was an ad-hoc local informal agreement between the States’ representatives that were present in the region.

By following the links in table 2 you will be directed to the relevant domestic provisions adopted for the purpose of implementing Decision 95/553/EC.

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 3: Implementation of European law into national law

There are **no divergent opinions** among the national Reports on the direct applicability of Arts. 20(2)(c) and 23 TFEU. Most of the national Reports expressly provide that these Articles are directly applicable (**Austria, Cyprus, the Czech Republic, Estonia, France, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Portugal, Slovakia, Spain, Sweden, the Netherlands, UK**), while the other national Reports, even if not expressly providing so, have a similar approach. Since Art. 23 TFEU is argued as being directly applicable then certain of the Member States have not adopted a specific national provision for the implementation of these Articles. However, a provision with similar wording can be found in the national legislation that have implemented Decision 95/553/EC. As a matter of practice, all national Reports mention that consular and diplomatic protection is exercised for the Union citizens. Member States that have specific provisions for the implementation of Arts. 20(2)(c) and 23 TFEU are **Austria, Denmark, Estonia, Finland, Greece, Latvia, Lithuania, Portugal, Slovenia and Sweden**.

2.3.1. Implementation of Decision 95/553/EC

Table 2: Implementation of Decision 95/553/EC

AT	Directly applicable (published in BGBl. (Federal Gazette) 254/2002 and 259/2002). For practical details, circulars to Austrian representations have been enacted. These circulars are not publicly available.
BE	<i>Loi portant assentiment à la Décision des représentants des Gouvernements des Etats Membres, réunis au sein du Conseil du 19 décembre 1995 concernant la protection des citoyens de l'Union européenne par les représentants diplomatiques et consulaires</i> (published in the Belgian Official Journal on 6 August 1999). The Ministry for Foreign Affairs has issued various circulars and instructions to Belgian representations abroad explaining the content of the obligations contained in this instrument and

¹⁷ It has to be stressed that at the moment of writing the Comparative Analysis, the only measures adopted for the purpose of implementing the former Art. 20 TEC are two international agreements concluded between the Member States of the Union, the first one in 1995 and the second one in 1996. The following Member States that acceded to the Union became bound by these agreements by way of signing their Accession Treaties, which expressly mentioned that Decisions of the representatives of the governments of the Member States are binding on the acceding States. In addition, there are several soft law acts adopted by the Council and the Commission. It can be easily seen that the only EU norms governing the field of consular protection were, before 1 December 2009, Art. 20 TEC and Art. 20 TEU, to which Decision 95/553/EC and 96/409/CFSP were added, and soft law (EU Charter of fundamental rights, Council Guidelines and the Commission's Green Paper and Action Plan). After the entry into force of the Lisbon Treaty, new provisions have been included in the TFEU and TEU and Art 46 of the EU Charter of fundamental rights became also primary law. Aside the last mentioned EU norms, there are the foregoing norms and the soft law adopted by the Council and the Commission.

	how the representations must apply it. These circulars and instructions are internal documents which are not publicly available.
BG	Not implemented into national legislation as a matter of general rule (it is implemented in some of the specific provisions of sector-specific instruments). The diplomatic and consular missions should apply it as a matter of administrative practice
CY	Directly applicable. Incorporated by executive acts of the MFA and not by legislative acts through the House of Representatives; as a result it has not been published in the Official Gazette.
CZ	The Ministry has issued a set of standards for the protection of nationals of other Member States addressed at consuls and consular missions: <i>Směrnice o konzulární ochraně občanů členských států Evropské unie</i> (Guideline for consular protection of citizens of Member States of the European Union), čj. (no.) 300574/2004-KO/05 of 31 March 2004.
DK	Transposed through revisions of the “Instructions on Consular Affairs” (<i>Borgerserviceinstruksen</i>) – not officially published.
EE	Implemented by the Consular Act .
FI	Directly applicable.
FR	Decree n°2002-701 of April 29, 2001 relating to the protection of the European Union's citizens by diplomatic and consular representations (published in the Official Journal of the French Republic)
DE	Implemented by internal circulars (<i>Runderlass</i>) regularly updated and sent to all consular officials. They are not officially published or made available in any other form to the public.
EL	Transposed into the Greek legal order by the process of ratification by law (Law 2968/2001 , Government Gazette FEK A 280/18.12.2001)
HU	17/2001. (XI. 15.) <i>KüM rendelet a konzuli védelem részletes szabályairól</i> (Directive 17/2001 of the Ministry of Foreign Affairs on the detailed regulation of consular protection) together with the Act XLVI of 2001 on consular protection serve the conformity with Decision 95/553/EC (Par 14/A-14/H of the directive)
IE	Directly applicable (Ireland made no legislative or publication move in this matter)
IT	Directly applicable
LV	Directly applicable.
LT	Implemented through the Law consular statute
LU	Règlement grand-ducal (27 May 1997) concerning Decision 95/553/EC (<i>Mémorial A</i> n° 49, 10th July 1997, p. 1612) giving it its full effect in the national legal order
MT	Decision 95/553/EC was given effect by administrative arrangements which were not published in the Government Official Gazette but were communicated by internal circular.
PL	Directly applicable
PT	Transposed by Decree 38/97, 23 July 1997
RO	Implemented by an executive act, Government Decision No. 868/2008 concerning the protection of EU citizens by diplomatic and consular missions published in the Official Journal

	No. 627, Part I, of 28/08/2008.
SK	Directly applicable. For practical details, circulars to Slovak representations have been enacted. For reasons of clarity, Decision 95/553/EC was also published in the Official Gazette
SI	Implemented through amendments to the Foreign Affairs Act in 2008 [OG, No. 76/08 (25 July 2008)]
ES	Directly applicable. The decision has been the object of an internal act: Circular Order n. 3.213, of 29 February 1996 .
SE	Implemented by the Ministry of Foreign Affairs' Regulations regarding Assistance to citizens of the Member States of the European Union (1996:9)
NL	Directly applicable (published in the National ' <i>Tractatenblad</i> ').
UK	Directly applicable.

According to the national Reports, the EU countries have taken the following approaches in order to implement Decision 95/553/EC:

(1) Legislative acts adopted for the purpose of implementing the EC Decision. These legislative acts are either adopted solely for the purpose of implementing the Decision (**Belgium, Greece**) or they are amending already existing legislative acts in order to implement the EC Decision obligations (**Estonia, Hungary, Latvia, Lithuania, Slovenia**);

(2) Member States that published Decision 95/553/EC as such in their domestic Official Journals (**Austria, Slovakia, Netherlands**);

(3) Executive acts adopted or amended for the purpose of implementing the obligations laid down in the EC Decision and/or explaining the content of the obligations to the consular and diplomatic officials (**Austria, Belgium, Cyprus¹⁸, Denmark, Finland, France, Hungary, Latvia, Luxembourg, Malta, Portugal, Romania, Slovakia, Spain, Sweden**). In certain EU countries these acts are not publicly available, particularly when the executive acts are internal circulars adopted for the purpose of informing the consular and diplomatic officials and the Ministry of Foreign Affairs staff (**Austria, Denmark, Finland, Germany, Malta, Slovakia, Spain**);

(4) Only guidelines (**the Czech Republic, Germany**) and notifications to the consular and diplomatic officials (**Ireland**).

According to the national Reports, the following States argued that Decision 95/553/EC is directly applicable: **Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Ireland, Italy, Latvia, Luxembourg, Slovakia, Spain, Sweden, the Netherlands, UK**.

¹⁸ **Cyprus** has adopted executive acts for the implementation of the EC Decision in the form of general instructions. These are not published in the Official Gazette, however, they are made public on the website of the MFA.

The national Reports on **Bulgaria**¹⁹, **Italy**, **Poland**²⁰, **Slovakia**, **Netherlands**²¹, **UK**²² provide that there is no specific act whatsoever implementing the EC Decision, they only point out that the EC Decision is considered as being directly applicable under their domestic legal orders based on the explanation that the EC Decision is part of the EU law which, on its turn, is directly applicable in their domestic legal orders. Among these EU countries, **Netherlands** is a monist country, while the **Slovak** Constitution allows for the direct applicability of the Decisions, therefore, only **Bulgaria**, **Italy**, **Poland** and the **UK** remain the EU countries that have not taken any form of implementing measures.

It is interesting to notice the approach of some of the EU countries on the implementation of the relevant EU obligations in the field of consular protection. For example, even though the **Slovak** Foreign Services Act was adopted on 9 March 2010, it does not include a provision on Art. 23 TFEU, nor does it try to solve the questions surrounding the exact *ratione personae* scope of the country's duty to ensure consular protection. According to the national Report on Slovakia, the Foreign Services Act aims to deal only with Slovak citizens.

According to the information made available by the national Reports on the measures adopted for the implementation of Decision 95/553/EC, the States where the implementing measures are not transparent, namely where the implementing measures are not publicly available, are the following: **Austria**²³, **Belgium** (partial transparency - the Decision has been published in the Official Journal, however, the further circulars and instructions adopted for implementing it are not available to the public), **Bulgaria**, **Cyprus**²⁴, **Denmark**, **Germany**, **Ireland**, **UK**²⁵.

As regards the practical experiences of the EU countries on the implementation of Decision 95/553/EC, most of the national Reports mentioned that their respective

¹⁹ According to the national Report, **Bulgaria** did not adopt a separate act solely for the purpose of implementing Decision 95/553/EC, however, it was implemented in some of the specific provisions of the sector-specific instruments. The lack of legal provisions implementing concretely the Decision could be explained by the lack of a specific Act on consular protection in Bulgaria.

²⁰ According to the national Report on **Poland**: *“As the Ministry of Foreign Affairs reports, after the Polish accession to the European Union all Polish consular posts were informed of the need to apply the then Art. 20 TEC (current Art. 23 TFEU). It should be underlined that the Ministry has reminded the consular officers about European consular protection on a number of occasions; most recently in the ministerial instructions on awarding consular assistance in emergency situations. Nonetheless, it must be admitted that Polish law lacks an explicit stipulation of European consular protection”*.

²¹ Among all of the EU countries mentioned in this category, only the **Netherlands** is a monist country. Both the EC and the CFSP Decisions have been published in the Netherlands Treaty Series and, on the basis of the information provided by the national Report, they are considered to have direct applicability.

²² On the basis of the national Report on **UK**, Decisions 95/553/EC and 96/409/CFSP are applied as a matter of policy. They are not officially published.

²³ Decision 95/553/EC was published in the Federal Law Gazette III No. 254/2002. However, the further executive acts – circulars – adopted for the purpose of implementing the Decision are not publicly available.

²⁴ The implementing executive measures are not public, however most of their provisions can be found in the guidelines on the application of Decision 95/553/EC which have been made public via the website of the MFA of Cyprus.

²⁵ As to the issue of lack of transparency of certain of the domestic measures implementing Decision 95/553/EC, this is of relevance depending on how the Commission intends to proceed, by way of supporting the adoption of directives or, if it supports the approach of certain of the Member States to leave their supremacy over the field of consular protection untouched for the moment, by way of revising the Decision. In the latter case, the issue of transparency of implementing measures of the Decision is still of relevance.

countries did not encounter any particular problems in providing assistance to EU citizens.

The **Swedish** Rapporteur has provided its own explanation of why usually no problems are encountered, mainly since the provision of consular assistance is not onerous as there are few Union citizens travelling/living in certain third countries and in other cases most of the EU countries are already represented in the third country concerned.

There are however a few examples of national Reports pointing out certain difficulties experienced in practice.

Austria has experienced problems when providing assistance to Union citizens, in particular concerning support to family members and visa issues; **Slovakia** has experienced problems in providing assistance to Union citizens, in particular concerning questions of visa and travel documents; on the other hand, **UK** did not experience problems on providing consular assistance to other EU citizens however it has to be pointed out here that the assistance itself is provided by the UK on the basis of administrative discretion.

The argument that the EC Decision is directly applicable under certain of the domestic legal orders based on the explanation that the EC Decision is part of the EU law which, on its turn, is directly applicable in their domestic legal orders, is brought by most of the national Reports²⁶. However, there are certain national Reports (**France, Poland and Romania**) which explicitly point out in the section on the implementation of the EU law in the national legal orders that Decision 95/553/EC has been recognised in their domestic legal orders in its *sui generis*²⁷ nature of an international agreement concluded among all of the [then] EU countries in a simplified form and not as an usual EC Decision having an express legal basis in the ex-TEC²⁸.

Decision 95/553/EC, hereinafter called EC Decision, as well as Decision 96/409/CFSP, hereinafter called CFSP Decision, are not acts of the Union's Institutions, but are acts adopted by the Representatives of the Governments of the Member States acting within the Council. They have been called²⁹ *simplified international agreements* because firstly they are concluded by the Representatives of the Governments of the EU Member States and not by the Heads of States and secondly they do not require formal ratification³⁰. Interestingly, the fact that the two Decisions have the material legal basis located in two different Treaties, namely the ex-TEC and TEU, does not lead to the usual application of

²⁶ A similar point of view has been expressed by a legal academic, which however cannot be said to be in minority within the legal academic writing, due to the fact that the literature on this specific subject is scarce. Nevertheless, in contrast with Bruno de Witte's approach on decisions concluded by the Representatives of the Governments of the Member States acting within the Council, Hartley interprets them as being part of EU law as such, as long as they have a binding effect and they have as a legal basis a Treaty provision. See more on this issue in T.C. Hartley, *The Foundations of European Union Law*, Oxford University Press, 7th edition, 2010, p. 94.

²⁷ See also the EUR-Lex database, under the section 'Format', Decision 95/553/EC is defined as *sui generis* - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41995D0553:EN:NOT>

²⁸ Decision 95/553/EC is not a decision in the meaning of Art. 249(4) TFEU (former Art 249 TEC); it is named decision, however, its adoption and entry into force prove that it is an international agreement concluded between the Member states and not an EC secondary law act.

²⁹ See in this regard the **French** and **Polish** Reports; as regards the legal academia, see B. de Witte, *Chameleonic MSs: Differentiation by means of partial and parallel international agreements* in *The Many Faces of Differentiation in EU Law*, edited by B. de Witte, D. Hanf and E. Vos, Intersentia, 2001 and by the same author, *The emergence of an European system of public international law: The EU and its Member States as strange subjects* in *The Europeanisation of International Law*, edited by Jan Wouters, André Nollkaemper, Erika de Wet, Cambridge University Press, 2008, p. 39-55. The author expressly qualifies the EC Decision as an international agreement.

³⁰ On the distinction between formal and informal ratification which differentiates between formal and simplified international agreements see also Fuad S. Hamzeh, *Agreements in simplified form- Modern Perspective*, in BYIL 1968-9, p. 179-190.

different legal principles to these Decisions and different legal effects within the domestic legal orders³¹. Regardless of their denomination of "*Decisions*", they have the same legal force deriving from their status of international agreements. Some of the national Rapporteurs³² as well as the few legal academics that have dealt with this topic³³ interpreted the Decisions as being simplified international agreements, however, the qualification of "*simplified*" does not have any legal relevance for the purpose of our research. The legal difference between the EC and the CFSP Decisions and the amending Treaties³⁴ which are largely recognised as being formal international agreements concerns only the method of conclusion and the necessary pre-requisite for their entry into force. As regards the method of conclusion, the Decisions were concluded by the Representatives of the Governments of the Member States meeting within the Council and not by the Heads of State, thus they could be qualified as executive agreements. As to the entry into force, Art. 8 of the EC Decision and Art. 2 of the CFSP Decision require only notification to the General Secretariat of the Council of the fulfilment of domestic procedure necessary for the internal application of the Decisions and not the deposit of instruments of ratification. It can be easily observed that the difference between these Decisions and a formal international agreement concerns only the solemnity of the conclusion procedure and entry into force of these *parallel international agreements*³⁵. However, no significant legal distinction can be drawn between the simplified parallel international agreements and the formal international agreements as regards the legal force and effects on both the international and national plane. They are both legally binding on the Contracting Parties which are bound to follow the rules and principles embodied in the Decisions³⁶. Furthermore, Art. 8 of the EC Decision and Art. 2 of the CFSP Decision have the same purpose as Art. 12 of the Nice Treaty³⁷, namely that of ensuring the fulfillment of the necessary domestic legal requirements for giving effect

³¹ There is a vast legal literature on the legal differences between what used to be first and second pillar measures, in relation to their legal force, effects in the national legal orders and competence of the ECJ to review the said measures - see M. Pechstein, *Une personnalité internationale pour l'Union Européenne?*, Revue des Affaires Europeenne, Paris, Année 6, No. 3, December 1996, p. 229-233; C. Hill, *The Capability-Expectations Gap, or Conceptualizing Europe's International Role*, Journal of Common Market Studies, 1993, Vol. 31, No. 3, p. 305-328; Sjursen, Helene, *A Common Foreign Policy for Europe? Competing Visions of the CFSP*, London, New York, 1998, p. 6; F. Dehousse, *After Amsterdam: A Report on the Common Foreign and Security Policy of the European Union* in EJIL 1998, Vol 9, Issue 3, p. 525-539; Gosalbo Bono, *Some Reflections on the CFSP Legal Order* in Common Market Law Review 2006, Vol. 43, pp. 337-394; A. Dashwood, *The Law and Practice of CFSP Joint Actions in EU Foreign Relations Law - Constitutional Fundamentals* edited by M. Cremona and B. de Witte, Hart Publishing, 2008, pp. 53-77.

³² See in this regard the **French** and **Polish** Reports.

³³ Among the legal academia, see B. de Witte, D. Hanf, E. Vos, *The many faces of differentiation in EU law*, p. 254; J Wouters, Nollkaemper, Erica de Wet, *The Europeanisation of international law: the status of international law in the EU*, p. 44, K. Lenaerts and P. Van Nuffel (Ed.), *Constitutional Law of the European Union*, Sweet & Maxwell, 2008.

³⁴ See the Amsterdam, Nice and Lisbon Treaties.

³⁵ The concept of '*parallel agreements*' has been used by Bruno de Witte in order to refer to international agreements concluded between all the European States that are members of the EU at the time of the signature of these agreements. According to author, the main legal issue raised by the parallel agreements is whether they are compatible with the obligations of the Member states under the EU law. He also points out that there is a high number of different types of parallel agreements, some required by the Treaties, as it is the case for the EC and the CFSP Decisions – ex-Arts. 20 TEC and 20 TEU – others allowed by the Founding Treaties, whereas further parallel agreements have come into being without such an express basis in the Treaties. As a concluding remark, Bruno de Witte point out that there is quite a wide variety of such agreements, they go under different designations, dealing with a broad range of subject matters, and not having a uniform legal regime.

³⁶ According to Ngyuen Quoc Dinh, edition revised by P Dailler, M Forteau and A Pellet, *Droit international public*, L.G.D.J, 8th ed., p. 152: "*quelle que soit la procedure suivie, longue ou courte, l'engagement par l'Etat est parfait des lors qu'il a exprime son consentement.*"

³⁷ The Treaty of Nice is generally recognised as being a formal parallel international agreement.

internally to the Decisions, thus the difference between the requirements imposed by these Articles is a purely formalistic one. In contrast with the majority of the Decisions of the Representatives of the Governments of the member States³⁸ which do not require the notification of the fulfillment of domestic procedures necessary for the internal application of the Decisions, instead they enter into force once signed by the Contracting Parties, Decisions 95/553/EC and 96/409/CFSP require an informal ratification procedure, identical with the procedure required for other recent Decisions adopted by the Representatives of the Governments of the Member States, such as the Decision on the privileges and immunities of the European Defense Agency Staff (Art 17)³⁹. Despite the positive aspect of the binding effect of these Decisions on all of the Member States, there is also a counterpart of not being acts adopted by the Union Institutions, namely these Decisions do not bind the Union's Institutions, and the ECJ does not have full jurisdiction over them. This aspect may be one of the reasons that point to the need of using the present Art. 23 TFEU for the purpose of adopting a Council Directive regulating the field and scrutinized by the ECJ which will have full jurisdiction over the relevant Council Directive.

The format chosen for the only measures regulating the field of consular protection conferred to the EU citizens can be explained by the lack of competence of the Union's Institutions at the moment of their adoption. The field was, at that moment, falling under the exclusive competence of the Member States⁴⁰. Therefore, the Member States have chosen the format of a simplified international agreement concluded among them with an informal ratification procedure for reasons of a speedy entry into force which was preferred over a tedious and long-drawn constitutional and international procedure. Ironically, despite the good intentions of the Member States and the less formal chosen procedure of the entry into force of the Decision, according to the 2008 Commission Report on the citizenship of the European Union, Decision 95/553/EC entered into force only in May 2002, seven years after the Member States signed the Decision, “*due to the cumbersome legislative procedures required for its adoption in Member States.*”⁴¹

It has to be pointed out that even if the EC and the CFSP Decisions are parallel international agreements and not acts of the Union's Institutions, the Member States, even when acting under the framework of international law, still have to comply with the EU fundamental principles of non-discrimination based on nationality⁴² and sincere cooperation⁴³. According to the principle of non-discrimination, the EU countries are not supposed to cause differentiation of rights and obligations between the EU citizens residing on their territory. Such a differentiation in rights can result when parallel agreements were, at the moment of their conclusion, including all of the Member States, however, latter on the Union enlarged and the new Member States are not parties to these parallel agreements. As regards the EC and the CFSP Decisions, the Accession Treaties of the Central and Eastern European Countries made sure that such a blatant

³⁸ Namely, those concluded on the basis of ex- Arts. 214(2) TEC, 223 TEC, 289 TEC, and 41 TEC.

³⁹ Decision of the Representatives of the Governments of the Member States, meeting within the Council of 10/11/2004 on the privileges and immunities granted to the European Defence Agency and to its Staff Members.

⁴⁰ During the [4.2.2009 debate within the European Parliament](#) on the topic of consular protection given to the EU citizens, the President-in-Office of the Council at that time pointed out to the fact that “*The 1995 decision is a decision between the Member States, reflecting the fact that consular assistance and protection is an **exclusive national responsibility** and that consular relations are governed mainly by the Vienna Convention on Consular Relations.*”[emphasis added].

⁴¹ Fifth Report from the European Commission of 15 February 2008 on Citizenship of the Union, COM (2008) 85 final.

⁴² The principle of non-discrimination based on nationality has found express and specific application in the field of consular protection by way of ex-Art 20 TEC and now Arts 20(2) and 23 TFEU.

⁴³ Case C-247/07 *Commission v Sweden*, (PFOS), judgment of 20 April 2010; Case C-433/03 *Commission v Germany* 2005, ECR I-6985; Case C-266/03 *Commission v Luxembourg* 2005, ECR I-4805.

discrimination will not occur by including a provision whereby the new Member States agree to accede to these Decisions⁴⁴. As to the accession procedure to the EC and the CFSP Decisions, according to the rules of public international law – Art. 15 of the Vienna Convention on the Law of the Treaties-, for an international agreement to become binding internally in the legal order of the new Member States, the latter have to deposit the instruments of accession. Art. 8 of the EC Decision and Art. 2 of the CFSP Decision provide an informal ratification procedure, therefore, it could be argued that in a similar way, there is no need of following a formal accession procedure, a notification of the fulfillment of the national requirements for the entry into force of the Decision in the domestic legal order of the new Member States is sufficient.

On the basis of the agreement among the Member States on following an informal ratification procedure (for the Contracting EU Member States) and an informal accession procedure (for the new EU Member States), it can be observed, as highlighted above, that the Member States have taken varied forms of internal measures for the implementation of Decision 95/553, ranging from adopting new legislative provisions, to internal circulars or guidelines not made public. On the other hand, there are also EU countries that have not taken any legislative or executive measures for the implementation of the Decision⁴⁵. The questions that follow are firstly, whether this framework of different forms of implementing measures and, where the case, lack of implementing measures, can lead to a different treatment applied to the EU citizens in the field of consular protection and secondly, whether the EU law principles require the EU Member States to adopt more uniform measures for the implementation of Decisions 95/553 and 96/409. As regards the first question, in light of the findings of the national Rapporteurs, particularly, the expressly stated discretion of the Member States⁴⁶ on when and to whom to confer consular protection and lack of specific, precise and transparent provisions implementing the principles and rules laid down in the EC Decision, then the current domestic legislative frameworks leave enough room for discriminatory consular protection to appear. The fact that the national Reports did not report a significant number of cases of discrimination and problems in relation to the application of the EC Decision does not lead to the conclusion that no such problems are possible to occur in the future. Rather, the conclusions that can be drawn are that firstly, since there are no well developed statistics about the cases of consular protection and assistance given by diplomatic and consular missions of other EU countries to the other EU citizens, then the data reported is not sufficient and relevant enough to conclude that no problems exist and, furthermore, that they will not appear in

⁴⁴ Art. 3(1) of the Protocol concerning the conditions and arrangements for admission of the Republic of Romania and Bulgaria to the EU: “*Bulgaria and Romania **accede** to the decisions and agreements adopted by the Representatives of the Governments of the Member States meeting within the Council*” [emphasis added] and Art. 5(1) of the the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded: “*The new Member States **accede** by this Act to the decisions and agreements adopted by the Representatives of the Governments of the Member States meeting within the Council.*” [emphasis added]

⁴⁵ As regards the EC Decision, the following EU countries have not taken any form whatsoever of implementation: **Bulgaria, Italy, Poland, Slovakia**, the **Netherlands** and the **UK**. The status of the implementing procedure as regards the CFSP Decision will be described and analyzed in [Section 5 on the ETDs](#).

⁴⁶ See in this regard, the national Reports on **Belgium, Germany, Malta, Netherlands, Slovenia** - as regards all cases except those also provided in the EC Decision, and the **UK**. In regard to **Belgium** the MFA circulated a *Note à la Direction Générale des Affaires Consulaires* of 13 January 2006 stating that consular protection for Belgian citizens abroad is a discretionary privilege. This position was confirmed by the *Tribunal de Première Instance* of Brussels in a judgment of 16 November 2005.

the future; secondly, the national legal frameworks on the implementation of the EC Decision is varied enough and lacks the requirements that a national legislative measure has to fulfill according to the ECHR established case law⁴⁷, thus, leaving enough room for discretion of the Member States in the field of consular protection and to possible discrimination among the EU citizens.

As regards the second question - whether the EU law principles require the EU Member States to adopt more uniform measures for the implementation of the Decisions, the question has to be assessed separately for the Contracting EU Member States from the new Member States, since their legal relation with the Decisions is different. As regards the Contracting EU Member States, the fact that the EC and the CFSP Decisions are purely international agreements concluded in a simplified form has been invoked by some of them as an argument explaining why no formal legislative measures have been adopted, but rather an informal ratification procedure has been followed (**France**). Even if this argument stands true on the basis of the specific format of the Decision, made clear in Art. 8 of the EC Decision and Art. 2 of the CFSP Decisions, on the other hand, it cannot be used to explain that some Contracting Parties have not adopted any implementing measures whatsoever. Even if the Decisions were concluded outside the EU framework, the duty of cooperation in good faith places the Contracting Member States under a duty to exercise their international powers without detracting from EU law or from its effectiveness⁴⁸. The Member States may affect the uniform implementation of former Art. 20 EC Treaty and now Art. 23 TFEU by not adopting clear, transparent measures implementing Decision 95/553/EC.

As to the new Member States, the express provision in the Accession Treaties of the obligation to accede to the Decisions of the Representatives of the Governments of the EU Member States brought the fulfillment of the accession procedure to the EC and the CFSP Decisions under the ambit of the EU law. Therefore, the new Member States are bound by the principle of sincere cooperation and the principle of internal administration to take the necessary internal measures for the proper internal application of the Decisions.

According to the Belgian judge at the ECJ, Koen Lenaerts, even if the Member States act by way of international agreements concluded among themselves, the duty of cooperation in good faith places a Member State under a duty to exercise its international powers without detracting from Community law or from its effectiveness - Joined Cases C-176/97 and C-177/97 *Commission v Belgium and Luxembourg*⁴⁹.

As a concluding remark, if certain EU Member States have adopted clear and transparent legislative provisions implementing the principles set out in the Decisions⁵⁰, while in other EU countries there is full discretion of the Member States and no specific rules whatsoever, or only executive acts that are not made available to the citizens, then this particular framework leaves room for discrimination among the EU citizens to appear. The fundamental principle of non-discrimination and the principle of sincere cooperation prohibits though the above-mentioned conduct of the Member States,

⁴⁷ Namely that law must be precise and ascertainable so that an individual may foresee the consequences which a given action may entail, see the ECHR *Steel* (1999) 28 EHRR 603, para. 54.

⁴⁸ Joined Cases C-176/97 and C-177/97 *Commission v Belgium and Luxembourg*; Case C-247/07 *Commission v Sweden*, (PFOS); Case C-433/03 *Commission v Germany* 2005, ECR I-6985; Case C-266/03 *Commission v Luxembourg* 2005, ECR I-4805.

⁴⁹ See also K. Lenaerts and P. Van Nuffel (Ed.), *Constitutional Law of the European Union*, Sweet & Maxwell 2008.

⁵⁰ Such as the **Belgian, Greek, Estonian, Hungarian, Latvian, Lithuanian** and **Slovenian** legislation which have express national legislative provisions implementing the principles of the EC Decision.

regardless of the fact that the process of implementation refers to a purely international acts.

2.4. National law

This sub-section of the national Reports assesses the national legislation relevant for the topic of consular protection. The national Reports present an exhaustive study of the internal norms of different legal force (ranging from constitutional norms, if any, until circulars and directives adopted by the competent administrative authorities). The purpose of the sub-section is to inform on the domestic legal framework governing consular protection, including also the relevant national case law.

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 4: National law

2.4.1. Legal basis of consular protection

The Vienna Convention on Consular Relations has been ratified by all of the Member States. The implementation of the Vienna Convention into the national legal orders of all of the Member States is a very important element for the analysis of consular protection and assistance under the national legislation.

As a matter of fact, there are Member States that do not have domestic legislative norms concerning consular and diplomatic protection aside the law implementing the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations (Belgium, **Cyprus**, **Luxembourg**⁵¹, **UK**⁵²). In **Austria** the legal basis for consular assistance is the Vienna Convention on consular relations, however, the Treaty has not been implemented by way of a separate internal act. Therefore, the legal basis of consular protection consists mainly on the VCCR norms.

Certain national Reports (**Greece**, **Ireland**) mention that, together with some internal rules, the main and most important domestic provisions on consular (and diplomatic) protection and assistance is in fact the internal legislation implementing the Vienna Conventions. Therefore, in addition of being a source of international law for consular assistance and protection, the Vienna Convention on Consular Relations has also become a source of national legislation for consular assistance and protection.

In regard to the Member States having national norms regulating the field of consular protection, it can be observed that there are two categories of EU countries according to the legislative organisation of the relevant domestic norms:

- EU countries having a consular law (**Estonia**, **Germany**, **Finland**, **Hungary**, **Italy**, **Latvia**, **Lithuania**, **Poland** and **Portugal**), that is a sole normative act that includes all

⁵¹ In **Luxembourg** there is no consular law aside the implementing and approbation acts of international and EU legal norms.

⁵² According to the national Report: “With the exception of bi-lateral and multi-lateral agreements under international law, consular assistance in the **United Kingdom** is based on published policy and not on legal right”. Therefore, the UK prefers to regulate the field by way of policy and not legislative acts. From this statement it can be understood that the bulk of norms in the field of consular and diplomatic protection of citizens is mainly formed of policy papers adopted by the executive.

of the relevant norms regulating: the organisation of consular posts, appointment and career of consular officers (including in some cases also honorary consuls⁵³), powers and liability of consular officers, activities of consular officers (certain of these domestic consular laws distinguish cases of consular assistance from other consular services⁵⁴).

- countries where the field is governed by provisions scattered in different national acts of different legal force dealing with different aspects of consular activity, such as the competences of the Ministry of Foreign Affairs, passports, consular fees, honorary consuls, free movement of the citizens etc. (**Bulgaria, the Czech Republic, France, Ireland, Italy, Latvia, Lithuania, Malta, Romania, Slovakia, Spain, Sweden**)

An example of legislative incoherence pointed out by the **Polish** Rapporteur concerns the notion of “consul”, which does not have a single, uniform definition under the Polish legislation on consular affairs. However, according to the national Report, it seems that this did not lead to practical difficulties.

Finally some of the Member States, which prefer to regulate the matter by a more flexible policy (like **UK**), are expressly against regulating the field by way of law⁵⁵. According to the national Report, the **Dutch Government** considers that consular assistance often is a matter of tailored service and that for that reason it is impossible, and undesirable, to create *ex ante* legislation. In a similar way, **Ireland** has decided not to regulate consular assistance practice in a statutory form⁵⁶.

⁵³ For instance, Chapter 3 of the **Estonian** Consular Act and Section 4 of the **German** Consular Law.

⁵⁴ See, for example, Chapter III *Activities of consular officers* of the the Lithuanian Consular statute (as last amended in 2009), that is organized as follows:

SECTION ONE CONSULAR ASSISTANCE

Article 14. Assistance in the Event of a Natural Disaster, Catastrophe, Act of Terrorism, Mass Riots, War or Armed Conflict

Article 15. Assistance in the Event of Death

Article 16. Assistance in the Event of an Accident or Illness

Article 17. Assistance to Victims of Crime

Article 18. Assistance to Persons Being Detained, Serving a Sentence or Suspected of Having Committed a Crime

Article 19. Assistance to Persons Lacking Full Capacity

Article 20. Assistance to Persons Who Have Lost Their Travel Documents and Persons Whose Travel Document Has Become Not Fit for Use or Has Expired

Article 21. Assistance to Vessels and Aircrafts Having the Nationality of the Republic of Lithuania

Article 22. Material Assistance

SECTION TWO OTHER CONSULAR FUNCTIONS

Article 23. Issuance of Visas and Equivalent Documents

Article 24. Extension of the Period of Validity of a Stateless Person's Travel Document

Article 25. Issuance and Replacement of a Passport and Issues Relating to Citizenship

Article 26. Forwarding Applications for the Issuance of Residence Permits

Article 27. Consular Registration of Citizens of the Republic of Lithuania

Article 28. Receiving Declarations of the Place of Residence and Processing of Data Related to Declaration of the Place of Residence

Article 29. Processing of Records of Active and Alternative Military Service of Citizens of the Republic of Lithuania

Article 30. Legalising and Certifying of Documents with an Apostille

Article 31. Registration of Records of Civil Status

Article 32. Notarial Acts Performed by Consular Officers

Article 33. Issuance of Consular Certificates

Article 34. Administration of Applications for Legal Aid

Article 35. Forwarding of Documents

Article 36. Receiving and Forwarding of Documents Concerning the Award and/or Payment of Pension

Article 37. Receiving and Forwarding of Documents Concerning Applications for an Authorisation to Import (Export) Weapons

Article 38. Protection of Interests of Citizens of the Republic of Lithuania in the Event of a Succession Mortis Causa in a Foreign State

Article 39. Safekeeping of Cash, Jewellery, Securities and Documents

Article 40. Notification of Dangerous Diseases.

⁵⁵ Here, the concept of law has a large meaning. It is not restricted to acts adopted by the Parliament.

⁵⁶ According to the national Report on **Ireland**, the adoption of a consular law has been under discussion. In the recent past, official consideration was given to setting out Irish consular assistance practice in statutory form as can be found in other States; but it was decided (after legal consultation) not to pursue this course, largely it seems because there are advantages in not specifying Irish practice in too much detail.

On the other hand, the national Report for the **Czech Republic** mentions that an official project has been launched with the aim of developing comprehensive legal framework on consular activities⁵⁷. For this purpose the project takes into consideration the legal framework existent in other Member States.

A draft of a Consular Act has been prepared by the **Austrian** Ministry on European and International Affairs. After internal discussions, it seems to be that the project of a Consular Act will not pursued for the time being. European developments may activate discussions again. The draft has not been made publicly available.

The following table summaries the information collected on this point by the national Reports, providing also direct links to consular laws.

Table 3: Legal basis of consular protection in EU countries

AT	In Austria, the Vienna Convention on Consular Relations constitutes the legal basis for consular services. No implementing national law exists so far. So far, a national consular law or law on diplomatic protection does not exist.	
BE	The Vienna Convention on Consular Relations constitutes the legal basis for consular services. No implementing national law exists so far.	
BG	There is no general regulation of diplomatic and consular protection, but there are several sector-specific instruments which contain provisions relevant for the consular services.	
CY	The legal basis for consular services is the Law No. 7/1976 which is the domestic implementing legislation that has given effect to the Vienna Convention on Consular Relations.	
CZ	Comprehensive national legislation on diplomatic and consular activities in general and on consular protection in particular does not exist. There are scattered provisions related to diplomatic and consular activities in several statutes (legislation on organization of ministries, legislation on fees related to consular services, legislation on role of consular offices).	
DK	Consular assistance is provide under the Foreign Service Act (Lov om Udenrigstjenesten) , complemented by lower ranking regulations such as the Instructions on Consular Affairs (not publicly available document) and the Executive Order on payment for services provided by the Danish foreign services .	

⁵⁷ At the moment, there is no bill pending in the Parliament of the **Czech Republic** or publicized official project of future legislation which would describe in detailed manner organization and structure of Czech diplomatic and consular service and its tasks. Nevertheless, the Ministry has commissioned a study on legal framework of consular activities in other European countries. The study analyses legislative framework for consular activities of several European countries (Germany, Italy, Poland, Hungary, Portugal, and Estonia). The study pays crucial attention to consular protection. The study recommends codification of standards for consular practice, including standards of protection of Czech nationals abroad. Besides establishment of standards for protection, effort to establish a legal basis for activity of Czech diplomatic and consular missions is perceived as a justification.

EE	Consular protection and assistance is provided under the Consular Act (2009). This act is elaborated and implemented by several regulations of the Minister of Foreign Affairs, two especially relevant being - the regulation establishing the Procedure for Providing or Refunding Financial Assistance and the Format of the Corresponding Applications - the regulation establishing the Conditions and Procedure for Sealing Urns and Coffins and the Format of the Certificate.	Consular Act (2009)
FI	Finland has a Consular Services Act (1999).	Consular Services Act
FR	Outside the national texts relating to the implementation of relevant international treaties and European law legislation, written laws do not exist. Administrative practice is based on the Ministry of the Foreign Affairs' consular instructions which are not published. There are also some jurisprudential data that complete these elements.	
DE	The Consular Act regulates the services provided, the fees are regulated by the Act on Fees for Public Services Abroad and its bylaw, and the Foreign Service Act regulates the competence of the Foreign Office in these matters.	Consular Act (Law on consular officers, their functions and powers - Konsulargesetz)
EL	A national consular law or law on diplomatic protection does not exist. The Vienna Convention on Consular Relations, which has been incorporated into the Greek legal order through the process of ratification by law, constitutes the legal basis for consular protection. Diplomatic and consular duties are set out in detail by a law (code) governing the missions and competences of the Ministry of Foreign Affairs (Law 3566/2007).	
HU	Detailed regulation of consular protection is provided by the Act XLVI of 2001 on consular protection; the 17/2001. (XI. 15.) directive of the Ministry of Foreign Affairs on detailed rules of consular protection provide more detailed guidelines.	Act XLVI of 2001 on consular protection
IE	The gist of Irish substantive law on consular protection is contained in the Diplomatic Relations & Immunities Act 1967. The Vienna Convention on Consular Relations is made part of Irish law by s.6 of the Act. This law may be viewed as giving the basis for Irish nationals to claim diplomatic or consular assistance abroad.	
IT	The basic rules for consular protection in Italy have been established by the Decree of the President of the Republic (<i>Decreto Presidente della Repubblica</i>), No. 18 of 5 January 1967 (“<i>Ordinamento dell'Amministrazione degli affari esteri</i>” - Organization of Administration of Foreign Affairs) and by the Decree of the President of the Republic (<i>Decreto Presidente della Repubblica</i>), No. 200 of 5 January 1967 (“<i>Disposizioni sulle funzioni e sui poteri consolari</i>” – Provisions on Consular Functions and Powers): the former deals with the organization of the Ministry of Foreign Affairs; the latter strictly regards consular protection.	Decree of the President of the Republic, 5.1.1967, n. 200
LV	The Law on Diplomatic and Consular Service outlines the	Law on Diplomatic and

	general tasks for diplomatic and consular service.	Consular Service
LT	Law Consular Statute is the principal legal instrument regulating the domain of consular law. The purpose of the law is to establish the powers and liability of consular officers, the basis for the activities of consular posts, the conditions and procedure for the provision of consular assistance and performance of other consular functions as well as the principles of provision of consular assistance to citizens of the European Union	Law Consular Statute
LU	National law on consular protection is essentially composed by acts implementing international treaties and EU legal instruments. Relevant rules are also incorporated in the <i>Arrêté grand-ducal du 29 juin 1923 portant règlement du service consulaire et introduction de certaines taxes à percevoir par les agents du corps consulaire, tel qu'il a été modifié par l'arrêté grand-ducal du 19 janvier 1943.</i>	
MT	There is no domestic law granting the right to consular protection however this is offered as a matter of practice and policy on the basis of respect for fundamental rights of the individual which are enshrined in the Maltese legal system, both in the Maltese Constitution and in ordinary laws.	
PL	Poland has quite thorough legislation on the foreign service and especially on consular activities. The most comprehensive regulation is embodied in 1984 Act on the Functions of Consuls of the Republic of Poland	1984 Act on the Functions of Consuls of the Republic of Poland
PT	Portugal has a specific legal document on consular affairs, the Consular Regulation (Decree-Law 71/2009, 31 March 2009)	Consular Regulation (Decree-Law 71/2009, 31 March 2009)
RO	Art 17 of the Romanian Constitution, Government Decision No. 868/2008 and Government Decision No. 760/1999 are the specific legislation on consular assistance and protection, several other legislation governing other fields contain a few other provisions regarding consular assistance and/or protection	
SK	The legal basis for consular services is constituted by the Vienna Convention on Consular Relations, directly applicable European rules, Foreign Service Act and several fragmented legal acts that cover specific areas that shall be executed by consular offices as well since they are State bodies.	
SI	National rules regulating matters relating to consular protection and assistance to Slovenian and EU citizens are included in Foreign Affairs Act, Instruction for Honorary Consular Officers of the Republic of Slovenia and the Travel Documents Act.	
ES	Consular protection is considered as an activity of the foreign administration of the Spanish State. In this regard, Law 6/1997 on the organization and functioning of the general administration of the State, consider consular offices as organs of the Spanish administration abroad. There is not a comprehensive law on consular protection and assistance in Spain, consular protection and assistance is	

	regulated in various regulations, ministerial orders and circular orders.	
SE	The legal basis for consular services constitutes the Vienna Convention on Consular Relations. There are also a law (SFS 2003:491) on Consular Economic Aid and a law on Consular Disaster Response	
NL	The most important document is the Vienna Convention on Consular Relations, as ratified by the Netherlands. The only two national pieces of legislation are the consular law of 1871 and the consular decision . The former document has largely been replaced by the Vienna Convention on Consular Relations. They both define the competences of Consuls and relate exclusively to their functions.	
UK	With the exception of bi-lateral and multi-lateral agreements under international law, consular assistance in the United Kingdom is based on published policy and not on legal right. The most recent published policy on consular assistance is entitled “ Support for British Nationals Abroad: A Guide ”	

2.4.2. Relevant case law

According to the national Reports, in most of the EU countries (19) there is no case law in the field of consular protection. Some of the Reports point out that the existent jurisprudence on consular issues concerns mainly the diplomatic and consular immunities and privileges or visas and asylum applications or other issues on consular services such as applications in regard to issuing of certificates, authentication of different acts, etc.

Most of the national Reports do not give explanations about why there is no relevant case law in the field of consular protection. However, the **Spanish** Report mentions a few possible reasons for the lack of substantial jurisprudence on consular protection and assistance. Thus, it could be explained by some exploratory arguments, such as: lack of information on the national judicial system for people living abroad and lack of economic means. At the same time, the Spanish Report prudently concludes that it is intricate to provide a definite legal explanation for this. Moreover as suggested by the **German** Report, cases of consular assistance and protection usually involve matters of urgency; hence, there does not seem to be no much room for legal disputes before the courts. It should be noted that one of the reasons for the poor domestic case law on consular protection in some of the EU countries may also be the discretionary power of the executive which the national courts are limited to review only if it was abusive or not exercised (**Belgium, Germany, Netherlands, Slovenia and Spain**). However, the extent to which national courts are entitled to examine administrative decisions varies according to the relevant national norms. For example, in certain EU countries, there is limited discretion left to the executive, including consular and diplomatic officials (**Bulgaria, Estonia, Hungary, Latvia, Lithuania, Portugal and Romania**).

According to the national Report on the **Czech Republic**, so far, there is no case law of the high courts related to consular protection of Czech nationals. Nevertheless, there is rapid – and often chaotic – development of Czech case law. Actions for the failure of consular protection could be expected in the foreseeable future. The impetus for such a development could be future legislation on consular activities which is recommended by

an internal study. On the other hand, the threat of claims for damages could postpone the enactment of such legislation.

In the following *hypertext index table 5*, the EU countries having no relevant case law at all are highlighted in grey.

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 5: Relevant case law

It is important to notice that among the EU countries having relevant case law, some of the judicial decisions are particularly important as they assess the question of whether their citizens have or not a right to consular protection (**Belgium, France, Portugal, The Netherlands** and the **United Kingdom**).

Belgium

According to the decision of [Tribunal de Première Instance de Bruxelles, 16.11.2005](#) there is no right (*droit subjective*) to diplomatic protection. Therefore a Belgian citizen cannot oblige the Belgian State to intervene to protect his/her interests.

France

According to [Conseil d'Etat, 25 mars 1988, n° 65022](#), the French authorities' decision of granting or refusing diplomatic protection to a person was in principle a governmental act (*acte du gouvernement*) which is impossible to appeal under the French administrative jurisdiction.

Following a decision of the Supreme Court of Spain on 6 October 1981 dismissing his application for exequatur, the company Sapvin was unable to enforce the ruling of the Court of Appeal of Aix-en-Provence against the Spanish society Sanivo condemning the latter to pay the company Sapvin 38 638 892.07 francs of damages. In this decision of 25 March 1988, the Council of State considers that the refusal by the Minister of Foreign Affairs to accede to Sapvin's request to open negotiations with Spain or, failing that, to refer the case to the International Court of Justice, constitutes a decision that is not separable from the exercise of the powers of the Government in the conduct of diplomatic relations. The arguments on the basis of which the company Sapvin seeks the annulment of that decision and compensation for the damages it caused him, raise issues that are not likely, by their nature, to be brought before the administrative court.

If the liability of the State is likely to be engaged on the basis of the principle of equality of citizens for the damages arising out of agreements concluded by France with other countries and regularly incorporated in domestic law, the remedy is subject in particular to the condition that the damage alleged has a special character. Given the generality of the provisions contained in the judicial convention between France and Spain and the number of French citizens to which those provisions may apply, the damage alleged by the company Sapvin, owing to the impossibility to enforce that ruling against the Spanish company Sanivo, cannot be regarded as having a special character such as to engage the State's liability without fault towards the company.

In [Conseil d'Etat, 6 avril 2001, n° 213061](#), the Council of State considers that a decision denying a *laissez-passer* to a person with refugee status may be appealed.

Article 3 of Decree of 13 January 1947 provides that the heads of consular posts and of diplomatic missions provided with a consular district are authorized to issue to foreigners, upon request and on an exceptional basis, *laissez-passer* to a destination in the French territory, if the laws and customs of their country of residence allow it.

The fact that the applicant holds refugee status at the time of the decision of refusal does not preclude that his application for a *laissez-passer* to France be refused on grounds of threat to public policy.

The refusal to issue a *laissez-passer* to a foreigner sentenced to life imprisonment in Germany for murder, attempted murder and involvement in terrorist activities, on the grounds that his presence in France would constitute a threat to public order, is not vitiated by a manifest error of assessment.



Portugal

The [Supreme court Decision of 12 February 2004](#) makes reference to a “duty to consular protection” while assessing the validity of the contracts based on which cash deposits were made by Portuguese citizens at the consular missions in Mozambique in the years after the country’s independence. However, the extent of consular protection provided to these citizens is not directly at stake in the decision.



The Netherlands

The most recent case on diplomatic protection, stipulating that there is no duty is the Van Dam case (*Van Dam v. The Netherlands*, [Civil Court \(The Hague\), 25 November 2004](#), Rolnummer 02/43, LJN: AR7484). The decision is in line with the general approach of the Dutch government and court: nationals have a legitimate expectation to receive assistance that is reasonable and comparable to others in similar situations.

According to the court decision, the State is entrusted, in principle, with verifying whether the authorities in the alien State correctly apply the legal rules in force in this State. Furthermore, the State shall address the authorities in case of inhumane circumstances in prison. However, it depends on the circumstances of the case which concrete actions and measures shall be instituted. In each situation, the question is what can reasonably be asked from the State as regards the care of its citizen in particular circumstances, taking into consideration the principles referred to above. The State policy will (and may) to a large extent depend on political considerations as regards external policy. It is not a matter of the right to consular assistance. In this case, the State has done everything that could reasonably be expected.



United Kingdom

The provision of consular assistance operates under the doctrine of ‘legitimate expectation’. An analysis of the concept of legitimate expectation is provided by the [decision of the House of Lords in *Council of Civil Service Unions and others v Minister for the Civil Service* \[1984\] 3 All ER 935](#).

This case established that under the doctrine of legitimate expectation, the controlling factor in considering whether a particular exercise of prerogative power is susceptible to judicial review is not its source but its subject-matter and the suitability of the issues that have to be determined. Thus, British courts do not normally have jurisdiction to judicially review the consular policies of the Foreign and Commonwealth Office if the subject-matter of those policies involve national security, foreign policy and foreign relations. On the basis of published policy, the level of expectation by British nationals is limited in nature. British nationals cannot ‘legitimately expect’ to receive consular assistance (or diplomatic protection) as a ‘right’ or ‘entitlement’.

It is very rare that the United Kingdom is challenged judicially if it exercises discretion not to provide diplomatic protection to British nationals and non-British nationals. The main legal challenge faced by the United Kingdom has been in relation to the extension of diplomatic protection to British nationals/residents that have been detained indefinitely in Guantanamo Bay, Cuba. The two leading cases are *R (on the application of Abbasi and another) v Secretary of State for Foreign and Commonwealth Affairs and another*; and *R (on the application of Al-Rawi and others) v Secretary of State for Foreign and Commonwealth Affairs and another*.

In [*Abbasi*](#), the Court of Appeal (Civil Division) held that the United Kingdom was not under any duty to provide diplomatic or any other protection to a British national who was suffering or threatened with injury in a foreign State. A decision not to provide diplomatic protection to a British national is judicially reviewable under the doctrine of legitimate expectation, for example, if the decision is irrational. Beyond this, however, British Courts do not have jurisdiction to enter ‘forbidden areas’, which include the subject-matter of national security, international relations and foreign policy. The Court observed the ‘very limited nature of expectation’ on the basis of published policy in the United Kingdom. In fulfilling its policy obligations, according to its stated practice, the United Kingdom needs only to ‘consider’ making ‘diplomatic representations’ (i.e., not diplomatic protection) on behalf of a British national. It may not always be reasonable, however, to expect the Secretary of State to state the reasons for considering why it would be inappropriate to provide such representation.

In [*Al-Rawi and Others*](#), the Court of Appeal (Civil Division), reaffirming *Abbasi*, held that the United Kingdom is not legally obligated to provide non-British nationals (including British residents) with diplomatic protection or diplomatic representation, despite allegations of real risk of torture or inhuman and degrading treatment. Moreover, the decision by the United Kingdom not to make a diplomatic representation does not constitute unlawful discrimination contrary to the Race Relations Act 1976. Indeed, unlike British nationals, British residents are not entitled to diplomatic protection under domestic and international law. Accordingly, this is a legitimate basis of distinction for the purposes of the 1976 Act. In any case, by giving ‘consideration’ of whether to provide diplomatic representation, the United Kingdom fulfilled its obligation of what could be legitimately expected under the doctrine of ‘legitimate expectation’ on the basis of its published policy.

Other cases are mentioned in the reports from **Finland, Germany, Poland and Romania**.

Finland

According to Supreme Administrative Court’s precedent [KHO:2007:23](#) the Supreme Administrative Court is not competent to examine an appellant’s demand concerning financial assistance under Consular Services Act.

According to Supreme Court’s precedent [KKO:1940-II-88](#) a consul has no competence to give information about customs duty because consul is not subject to official liability concerning these matters.

Germany

Case law with regard to diplomatic and consular assistance and protection is scarce. Most of the cases concern the question of reimbursement after the assistance and protection has been provided. Reimbursement is foreseen in cases of assistance and protection according to Paragraph 5 subparagraph 5 of Consular Act but can be waived ‘*if the personal situations of the assisted person or other situations*

demand this.' In this regard a recent case should be noted where the *Bundesverwaltungsgericht* (Supreme Administrative Court) ruled that the German government could claim reimbursement for a helicopter flight which transported a German hostage from the jungle back to the capital of Colombia [BVerwG 7 C 13/08 (28th May 2009)].

Poland

The Warsaw Court of Appeal ruled in 2007 (13 December 2007, I ACa 580/07) that the 1984 Act on the Functions of Consuls of the Republic of Poland contain an open catalogue of consular activities in relation to those arrested, detained, etc. and those leave the consul discretion as whether to provide or not to provide assistance. It simply allows the consular official to choose the method of intervention that he deems adequate.

Romania

On the site of the Tribunal of Bucharest, which is the competent court to review complaints against the refusal of a consular official to provide consular services, there is only one case related to consular services (Case 45765/3/2009 of 12.02.2010)⁵⁸. In this case, the Court found the Department of Consular Relations within the Romanian Ministry of Foreign Affairs guilty of having breached the Law No. 544/2001 on the communication of information of public interest by not answering the request of the applicant, a Romanian citizen.

2.5. Documentation on consular practice

This sub-section of the national Reports focuses on identifying the national sources of information on legislation regulating consular protection and practice in each of the EU countries. Hypertext index table 6 contains direct links towards the specific information provided by the national Reports.

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 6. Documentation on consular practice

2.6. Information to citizens on consular protection

This sub-section of the national Reports provides information on how EU countries inform their citizens on what their consular and diplomatic officials can and cannot do, particularly when the citizens are in difficult situations abroad and on the rights derived from Art. 23 TFEU and the EC and CFSP Decisions. The subsequent Table 4 presents the exact information located in the national Reports on this topic.

⁵⁸ Available at http://www.tmb.ro/dosare_ecris.php?id_dosar=300000000298586

Among the main sources of information provided by the national Reports, the following sources are to be mentioned:

- brochures and other printed materials;
- all EU countries provide on their Ministries of Foreign Affairs' websites some sort of guiding information on consular protection that the diplomatic and consular officials can give to their citizens and in many cases specific information on rights deriving from Art. 23 TFEU;
- assistance by phone which is available in all EU countries in crisis situations; in addition, certain EU countries have a 24/7 available phone number (**Belgium, Denmark, France, Ireland, Netherlands, Portugal, Spain, UK**).

According to the national Report on **UK**, *“the United Kingdom will not engage in publicity campaigns to inform EU citizens of Art. 23 TFEU until its definition and meaning has been legally clarified. The language of ‘consular and diplomatic protection’ and ‘entitlement’ hold a stronger guarantee than is actually available to EU citizens and could create a potentially confusing state of affairs for EU citizens.”*

Taking into account the Commission's recommendation in the 2007-2009 Action Plan, i.e., that Member States print Art. 20 TEC [now Art. 23 TFEU] in passports issued after 1 July 2009, certain EU countries decided to already insert the now Art. 23 TFEU obligation in the citizens passports (**Malta, Slovenia, Sweden**), some EU countries have decided to insert it in the future and there are at least two cases of EU countries (**Ireland⁵⁹** and **UK**) that are not convinced of the need to include Art. 23 TFEU provision in the citizens' passports.

Table 4: Information to citizens on consular protection

<u>AT</u>	For Austrian citizens, the website of the Ministry provides a summary of guideline enacted by the Austrian Ministry for European and International Affairs for consuls and diplomats.
<u>BE</u>	The Ministry for Foreign Affairs has published a number of brochures available at the Ministry for Foreign Affairs, the Belgian diplomatic and consular posts abroad but also in travel agencies all over the country. The website of the Ministry for Foreign Affairs provides information to the general public on items that are most relevant for those who are travelling or living abroad. The information on the website is available in Dutch, French, German and English.
<u>BG</u>	Bulgaria does not maintain a dedicated web site or general advisory service on consular protection but there is relevant information on the matter on the MFA web site Some of the Bulgarian missions have their own web sites, which do not conform to a single pattern and the information provided by them varies.
<u>CY</u>	MFA website includes pages on <u>travel information</u> and <u>consular assistance and protection</u>
<u>CZ</u>	The Ministry informs on its web pages in Czech language in section <i>Cestujeme – jak řešit situace v zahraničí</i> (We are travelling – how to solve situations abroad) how to resolve dozens typical situations abroad. Moreover, the Ministry informs the Czech public repeatedly at annual press conferences (before the summer season) and through its web pages about the possibility to ask for consular protection at consulates or by contacting consuls of other Member States of the European Union.

⁵⁹ According to the Summary Report of Public Hearing of 29 May 2007, p. 5 *“On the other hand the Irish representative was clear that the Irish authorities do not believe that Article 20 should be printed in passports. With each passport delivered, Ireland provides an information pack which already includes a document describing the citizens’ rights under Article 20 of the TEC.”*

<u>DK</u>	The website of the Ministry of Foreign Affairs contains detailed information to citizens about consular assistance. In addition, all Danish embassies have their own website. In 2007, the Ministry of Foreign Affairs established a ‘24/7-citizen support centre’. The Ministry provides information about its services at international travel fairs held in two major Danish cities each year.
<u>EE</u>	For Estonian citizens, the website of the Ministry of Foreign Affairs provides information and instructions on how to act if assistance is needed while abroad.
<u>FI</u>	The website of the Ministry of Foreign Affairs provides complete information about the country’s consular services.
<u>FR</u>	The French Administration has published a guide <u>Etre victime à l'étranger. Quels droits et actions? Quelles spécificités?</u> , available on the Ministry of foreign and European affairs website and on the Ministry of justice website
<u>DE</u>	Information on consular protection can be found on the web page of the German Foreign Office which has a separate section on general consular assistance and assistance and protection in case of emergency. Many of the regional German embassies provide information on their web pages usually only in German
<u>EL</u>	Information to citizens on consular protection is mainly disseminated through the website of the Hellenic Ministry of Foreign Affairs. Diplomatic and consular missions abroad also provide information upon request, or on their websites, where these exist.
<u>HU</u>	All the relevant information on consular protection and assistance are published in the website of the Ministry of Foreign Affairs.
<u>IE</u>	Department of Foreign Affairs website and booklet entitled: “ <u>Travel Safely - Slan Abhaile</u> ” published by the Department of Foreign Affairs as a “Consular Services Charter” of 2008. Ireland is unconvinced of the need to include Art. 23 provision in Irish passports
<u>IT</u>	Official information to citizens about consular protection is provided by the Ministry of Foreign Affairs through its website (that includes a <u>Guide to consular services</u>) and the websites of Consular offices.
<u>LV</u>	The website of the MFA and different embassies provide information on how to act in different situations (loss of passport, financial assistance, assistance in cases of illness or accident, assistance in case of death of a person abroad). The Ministry also invites persons to familiarize themselves with summarized information entitled <i>What should be known when going abroad</i> . Advices about possible assistance can be obtained by calling an emergency phone number.
<u>LT</u>	Information to citizens on consular protection is available on the website of the Ministry of Foreign Affairs. Consular information is available in Lithuanian, English, Russian and French. Citizens also could find information on the websites of diplomatic missions and consular posts.
<u>LU</u>	The website of the Ministry for foreign affairs provides a summary of what citizens can expect from the consular assistance (but it does not precise that consular services are equally open to EU nationals). From 2011, Luxembourg will put, inside the passports, a kind of label recalling the text of Article 23 TFEU. Brochures explaining ex-Article 20 EC were distributed among Luxembourgian travel agencies in 2008.
<u>MT</u>	On the back cover of all new (biometric) passports issued by the Malta Passports Office Article 23 TFEU is reproduced.

	Malta has published explanations on the rights deriving from ex Article 20 TEC in an extensive Travel Manual for Maltese nationals on the Ministry of Foreign Affairs website.
<u>PL</u>	Comprehensive information on consular protection is provided on the website of the Ministry of Foreign Affairs in the Section: ‘Consular information’ (<i>Informacje konsularne</i>). It contains a detailed guide ‘A Pole abroad’ (“ <i>Polak za granicą</i> ”), addresses of Polish missions, information on authentication of documents, passport and visa information as well as information on customs and taxes. Some travel warnings appear on the website on a regular basis. Information on consular assistance abroad are published also on individual websites of a number of Polish diplomatic and consular posts.
<u>PT</u>	Official website of the Portuguese Ministry of Foreign Affairs’ Secretariat for Portuguese Communities provides all the relevant information on consular issues and, since 2007, it also provides consular services on-line with the “Virtual Consulate” (<i>Consulado Virtual</i> : www.consuladovirtual.pt). An Emergency Consular Office (<i>Gabinete de Emergência Consular</i>) provides continuous (24/7) assistance by phone. Leaflets with consular information are regularly issued by the Secretariat and made available at the consular missions and at travel agencies.
<u>RO</u>	Information on consular protection can be found in the Consular Guide book ‘ <i>In support of Romanians who are abroad</i> ’ available both on the site of the Foreign Affairs Ministry and on the site of the Romanian diplomatic and consular missions. Further information on what a consular official can or cannot do can be found on the individual sites of the Romanian diplomatic and consular missions
<u>SK</u>	A brochure is available on the website of the Ministry of Foreign Affairs for Slovaks abroad in case they needed help. It contains also information about assistance provided by consular or diplomatic missions of other EU Member States Moreover, a non-stop line has been provided by the Ministry of Foreign Affairs.
<u>SI</u>	Text of Article 23 TFEU is reproduced in Slovenian passports.
<u>ES</u>	Information on consular services can be found at the website of the Ministry of Foreign Affairs and Cooperation, in periodic publications of the Ministry at issue, such as the ‘Guide of representations of Spain abroad’, annually published, as well as in the websites of the main consulates.
<u>SE</u>	Sweden has taken a decision to include Article 23 TFEU in Swedish passports.
<u>NL</u>	General information on what the Dutch Embassy is willing to do (and what it will not do) is provided on the website of the Ministry. This website contains an exhaustive list of situations in which nationals may appeal to the consular officers for assistance
<u>UK</u>	Several official publications provide Ministerial statements on consular assistance in a number of policy areas. The most recent published policy on consular assistance is entitled ‘ <u>Support for British Nationals Abroad: A Guide</u> ’ The United Kingdom will not engage in publicity campaigns to inform EU citizens of Article 23(1) TFEU until its definition and meaning has been legally clarified.

3. Fulfilment of Union obligations by the Member States under Art. 23 TFEU and statistical data on consular practice

3.1. Contractual framework

This sub-section of the national Reports focuses on assessing how the EU countries in their relations with the third States have followed the EU norms concerning consular protection.

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 7: Contractual framework

As a general rule resulting from the national Reports, it can be seen that the Member States' bilateral agreements with third countries do not include provisions protecting Union citizens working and/or living in third countries.

There are however two exceptions: **Italy** and **Portugal**.

As to **Italy**, the bilateral agreements signed by Italy after the entry into force of the Maastricht Treaty - namely the Conventions with Ukraine in 2003 (Art. 62), Republic of Moldova in 2000 (Art. 61), Georgia in 2002 (Art. 60), Great People's Libyan Arab Jamahiriya Socialist in 1998 (Art. 2) and [Russian Federation in 2001](#) (Art. 37) - contain all the following provisions: *“Upon notification to the State of residence, and unless it opposes this, the Consular Office of the sending State may exercise consular functions in the State of residence on behalf of a third Country”* and *“In accordance with this Convention Consular officers of the Italian Republic may exercise in the jurisdiction of the State of residence consular functions on behalf of nationals of other EU Member States which do not have Consular offices in the consular jurisdiction of such officials”*.

According to the Italian Rapporteur, this provision allows the exercise by the sending State (Italy) of consular protection for EU citizens, independently of any notification to the State of residence or an opposition of that State. In this way Italy has fulfilled its Union obligations under former Art. 20 EC Treaty. And now Art. 23 TFEU.

As regards international agreements concluded by Italy before 1995, no amendment is envisaged for the purpose of including a provision on the extension of Italy's consular protection to other EU citizens or their non-EU family members.

As to **Portugal**, the [Consular Convention between Portugal and the Russian Federation \(2001\)](#) states, in Art. 36(5), that the Portuguese consular officials may act on behalf of Union citizens who are nationals of a Member State not represented in the Russian Federation territory. The Convention does not provide the extension of the Portuguese consular protection to non-EU family members.

On the other hand, all of the national Reports mention that their diplomatic and consular missions are aware of their Art. 23 TFEU obligation to provide consular protection to all of the EU citizens without discrimination and express a more or less readiness to provide EU citizens with protection equal to that of their nationals⁶⁰. Certain national

⁶⁰ As an interesting example, the **UK** Report mentions that *“the UK provides consular assistance to EU citizens only in exceptional circumstances rather than on a day-to-day basis.”* One of the reasons that UK insists that EU citizens have an equal opportunity to access consular assistance, but the assistance itself

Reports provide also an explanation on why no provision has been included in the bilateral international agreements: the new EU countries argue that all of these agreements date before their accession to the Union while the old EU countries mention that these agreements date before the establishment of a European right to un-discriminatorily consular protection (see particularly **France** and **Germany**). These arguments can explain why none of the bilateral agreements concluded by the EU countries contained, at the moment of their conclusion, a provision on the extension of the consular protection of the EU country party to the agreement to the EU citizens of all other EU countries in the Contracting third State. However, the aforementioned arguments cannot explain why no further amendments were brought to these agreements by none of the EU countries, or why no negotiations have started in this regard. The **French** and the **UK** Reports clarify to a certain extent this issue, namely, the amendment is not considered to be a current issue under their domestic legal orders.

In addition, it has to be pointed out that, according to the national Reports, none of the EU countries developed a formal prior notification practice, whereby they inform third countries on the extension of their consular protection to the EU citizens of other unrepresented EU countries or the non-EU family members, if the case, as required by Art. 23 TFEU. The common practice seems to be that of *ad-hoc* informal notifications, left, thus, at the discretion of the consular officials in the region. In this regard it has to be pointed out as a single exception the Belgian practice. The national Rapporteur mentioned that **Belgium** has advised his consular network to inform third countries' authorities about the practice of extending consular and diplomatic protection to non-national Union citizens (Art. 8 Vienna Convention). In the same notification Belgium asked the authorities of third countries to inform their local authorities of the existence of this type of cooperation between the EU Member States.

According to the Summary Report of Public Hearing on the Green paper⁶¹: *"The French representative pointed out that **France** has already used the practice of notification to third countries. According to Article 8 of the Vienna Convention, the French government has notified Chad that it will be representing the 26 Member States in the country and will be responsible for all EU citizens in case of crisis. Furthermore, the 26 Member States have notified Chad that they will be represented by the French authorities. The French authorities stated that the practice of notification seems to work well on the ground."*

According to the German Report, **Germany** did not notify third States that it will grant diplomatic and consular protection to the citizens of other EU-Member States which do not have a consular post in the respective third State since the EU Presidency of 1993, already informed by verbal note the authorities of all third countries of the "Guidelines for the Protection of Unrepresented EC Nationals by EC Missions in Third Countries" which was adopted by the 241st Political Committee on 29 and 30 March 1993.

Lithuania has informed Morocco, Tunisia and Algeria that the Republic of Poland exercises consular functions in Rabat and Casablanca (Morocco), Tunisia and Algeria on behalf of the Republic of Lithuania, based on the [Consular Convention between the Republic of Lithuania and the Russian Federation](#).

is exercised on the basis of administrative discretion is that of *consular shopping*. On the other hand, the national Report on **Denmark** provides expressly that it will offer assistance to EU citizens in the same ways as to Danes. **Malta** has already included on the back cover of all new passports issued by the Malta Passports Office the provision of Article 23 TFEU. The **Slovenian** authorities have also included the wording of Art. 23 TFEU on the back cover of the Slovenian passports. According to the national Report, **Sweden** has taken a decision to include Article 23 TFEU in the Swedish passports.

⁶¹ Summary Report of Public Hearing on the Green paper of 29 May 2007, p. 11.

Furthermore, no EU country bilateral agreement with a third State includes provisions extending consular protection to Union citizens' family members who are not nationals of a Member State. The national Report on Denmark mentions that Denmark has not informed third countries of its practice of consular assistance given to non-EU family members in cases of evacuations, or in case it is requested and the home Member States of the Union citizen in question consents.

If certain national Reports expressly point out that their respective EU country supports the idea of including in bilateral agreements with third countries provisions protecting Union citizens working and living in third countries (**Luxembourg**), another national Report expressly points out that its respective EU country rejects such a proposal (**UK**).

The United Kingdom understands the importance of obtaining the consent or acquiescence of the receiving State in providing consular assistance to EU citizens. In the practice and experience of the United Kingdom, however, this is not problematic and receiving States are generally content for assistance to be provided by other Member States. Thus, the United Kingdom has rejected the proposal by the European Commission that Member States negotiate a 'consent clause' in their existing bi-lateral agreements with third countries in order to formalise the arrangements under Article 23 TFEU. Given the experience of the United Kingdom, the seeking of formal agreements would be a 'major' and 'wholly unnecessary' task. Of course, whether other Member States need to negotiate consent clauses with third countries is dependent upon their existing agreements and arrangements. In addition, the United Kingdom does not believe that the European Commission has the competence under Article 23 TFEU or the practical experience to deliver consular assistance. For this reason, the United Kingdom does not consider that it is necessary to negotiate consent clauses in its existing bi-lateral agreements with third countries for the provision of an 'EU' consular service.

3.2. Statistical data on consular practice

In the following table, direct links can be found towards the relevant information in the national Reports on the statistical data on consular practice, of course where available.

Table 5: Available statistical data on consular practice

AT	Statistical data 2005-2007 and 2009
BE	Statistical data 2005-2009 Numbers of Belgians detained abroad Statistical data on ETDs issued to EU nationals Statistical data on consular functions for expats
BG	No data available
CY	No data available
CZ	Statistical data 2004-2007
DK	Statistical data 2004-2006
EE	Statistical data 2006-2009
FI	Statistical data 2009

FR	Statistical data on repatriation of distressed citizens (2007-2008)
DE	No data available
EL	No data available
HU	Statistical data 1998-2001 and 2004-2008
IE	Statistical data 2008 (assistance in case of death)
IT	Statistical data 2006-2008
LV	Statistical data 2005-2008
LT	Statistical data 2006-2008
LU	No data available
MT	Statistical data for the years 2000, 2003 and 2005
PL	Statistical data 2007-2009
PT	Statistical data 2006-2008
RO	No data available
SK	Statistical data 2006-2009
SI	Statistical data 2006-2009
ES	Statistical data on aid conferred by consular offices in 2008
SE	ETDs delivered by consular offices to EU citizens
NL	Statistical data 2006-2008
UK	Statistical data financial years 2007/08 and 2008/09

The data collected by the national Reports under this sub-section concern:

- number of cases of consular assistance provided by the 27 EU countries in emergency situations;
- number of cases of consular assistance provided for unrepresented EU citizens;
- number of cases of other consular services (e.g., nationality issues, notarizations etc.).

In this sub-section of the comparative analysis are mentioned also statistical data provided by the national Rapporteurs in other sub-sections of their national Reports [namely [4.6.1](#) (Natural disasters) and [4.6.4](#) (Military conflicts) regarding cases of consular assistance to EU citizens (other than nationals) in recent crisis].

From the provided statistical data, certain conclusions can be made on the following issues:

- (i) availability of statistical data on the topic of consular assistance;
- (ii) availability of specific data on consular representation of the unrepresented EU citizens;

(iii) quality and comparison of the available data.

As to (i), based on the information made available by the national Reports, it can be argued that there are two different categories of EU countries:

- EU countries where statistical data are available on the Ministries of Foreign Affairs' websites or in other official publication (**Austria, Czech Republic, Estonia, Hungary, Italy, Latvia, Lithuania, Poland, Slovakia** and **UK**);
- EU countries where there are no detailed and systematic collection of data or, even if there are, they are not made available to the public (**Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Germany, Greece, Luxembourg, Malta, Romania, Slovenia, Spain, Sweden** and **the Netherlands**); **Ireland** and **Portugal** also fall under this category, however, in these EU countries it is expected that a database collecting the relevant data will be made available. As regards **Portugal**, the database *Observatory on Emigration* was created in 2008 and will eventually collect statistical data, but, so far, the database is still under construction. As regards **Ireland**, a new software (*Worldreach*) was created in January 2009, which allows for a detailed compilation of recent statistics, to be published each year as part of the annual report [the Irish consular assistance dedicated database called '*Cabhair*' in Irish].

Nevertheless, even for this second category of EU countries, it was possible to collect data by way of direct contact with the officials of the MFA or of the consular missions (**Belgium, Portugal**⁶², **Sweden**⁶³), even if in certain of these cases, the data concerns only one specific type of assistance (**France** and **Spain**).

As to (ii), there are just a few data that were possible to collect. Among the EU countries where it was possible to collect data, only in a few number of cases specific and precise information on assistance given to unrepresented EU citizens is available.

Other information can be found in the data provided by the national Reports on specific events.

The collected data is resumed in Tables 6 and 7 as regards recent crisis situations.

⁶² The numbers that were collected for the **Portuguese** Report are the result of interviews with public officials at the Ministry of Foreign Affairs and of correspondence with Portuguese consular missions around the world.

⁶³ Due to the lack of official statistic from **Swedish** authorities a questionnaire was sent by the CARE Rapporteur to the Swedish embassies and consulates in third countries. Forty-one out of the ninety embassies and consulates have answered the questionnaire.

Table 6: Number of cases of consular assistance provided for unrepresented EU citizens

	cases	notes
AT		
BE	5	ETDs per year (average)
BG		
CY		
CZ	114	In 3 years (2005-2007): ETDs (16 cases) + emergency situations (98 cases)
DK		
EE	39	Emergency situations in 4 years (2006-2009) + ETDs (13 cases) in 2005-2007
FI	198	In 2009: EU citizens and Nordic countries citizens
FR		
DE		
EL		
HU		
IE		
IT	26	In 2009: 25 ETDs + 1 case of assistance to unrepresented detainee
LV		
LT	14	In 3 years (1 in 2006, 1 in 2007, 12 in 2008)
LU		
MT	0	In 3 years (2000, 2003, 2005)
PL	48	In 3 years (2007-2009), that is ~0,03% [3 cases out of 10.000] of total number of interventions <i>[many of these cases were conducted for Lithuanian citizens in Maghreb. Thus, the legal basis for the interventions was the bilateral agreement on permanent representation with Lithuania]</i>
PT	3	In 2007
RO		
SK	1	
SI	1	ETD
ES		
SE	5	ETDs per year (average)
NL		
UK		

In addition, in 2007-2009 there were 22 cases of Polish citizens who benefited from consular protection extended by posts of other EU Member States.

Table 7: Cases of assistance to EU citizens (other than nationals) in recent crisis

	<i>cases</i>	<i>notes</i>
AT	143	Lebanon 2006: EU citizens evacuated
BE		
BG		
CY		Lebanon 2006 – Assistance to 60.000 EU and third country nationals arrived in Cyprus
CZ		Lebanon 2006 - Assistance was provided by Czech consular mission for nationals of other Member States including these Member States represented in Lebanon.
DK		Lebanon 2006 – assistance were provided to citizens of the other Nordic countries as well as EU citizens
	71	Lebanon 2006: Swedish citizens evacuated
EE	11	Georgia 2008: 11 EU citizens evacuated + 19 third countries nationals
FI		
FR	3	Haiti 2010: Polish citizens evacuated
	14	Georgia 2008: Dutch citizens evacuated
DE	1	Haiti 2010: Polish citizen evacuated
	1	Lebanon 2006: Slovenian citizen evacuated
EL	2217	Lebanon 2006: Non-Greek citizens
	6	Tsunami 2004: EU citizens
HU		Lebanon 2006: Slovak nationals were transported by Hungary
IE		
IT	2	Lebanon 2006: 2 Slovenian citizens evacuates
	4	Georgia 2008: Dutch citizens evacuated
LV		Georgia 2008: Latvian embassy provided assistance to citizens of Lithuania and Estonia
LT	6	Georgia 2008: Estonian citizens evacuated
LU		
MT		
PL	71	Georgia 2008: EU citizens from different countries evacuated
		Lebanon 2006: Slovak nationals were transported by Poland
PT		
RO		
SK	1	Georgia 2008: German citizen evacuated
SI		
ES	4	Haiti 2010: 3 Portuguese citizens + 1 Polish citizen evacuated
	1	Lebanon 2006: Slovenian citizen evacuated
SE		Lebanon 2006: Sweden evacuated over 8.400 people, Swedish citizens and others
NL	1	Georgia 2008: Slovakian citizen evacuated
UK		Georgia 2008: 48 eligible persons (British nationals, EU citizens and British Commonwealth citizens) were assisted by bus from Tbilisi and taken to Yerevan.

As to (iii), every of the EU country collects statistical data according to its own criteria in terms of sector coverage (e.g., which of the emergency situations are taken into consideration, which of the cases falls under one of the specific categories), statistical unit, time coverage etc.

Taking into consideration the data provided by the national Reports, it can be identified that often there is no distinction among the cases of assistance provided in other EU countries from assistance given in third States. In a large number of cases, the origin and quality of the provided data are not clear. In general, details on the assistance cases are not provided, such as: nationality or age of the applicants for assistance, type of the requested assistance. As a concluding remark, it can be argued that a lack of exhaustive coverage of the different facets of consular assistance/protection and of homogeneity of the provided data transpires. Consequently, making it very difficult to draw general systematic conclusions and, thus, the comparison of the data provided has to be considered as merely indicative.

The subsequent Table collects the available data on consular assistance provided in emergency situations. Where available, data were divided according to the different situations of emergency, otherwise the data were inserted in the column “other/not specified”.

Table 8: Number of cases of consular assistance provided by the 27 Member States – Emergency situations

For each Member State data relating to the most recent year are provided

	<i>year</i>	<i>death</i>	<i>accident</i>	<i>Financial aid</i>	<i>Repatriation</i>	<i>Illness / hospitalization</i>	<i>Arrest / detention</i>	<i>Other / not specified</i>	<i>Total</i>
AT	2007								2570
BE	2009	265		148				334	747
BG									
CY									
CZ	2007	49	501	81		368	1093	2911	5003
DK	2006							4000	4000
EE	2009			84				426	510
FI	2009	373	0	61	0	357	161	1535	2487
FR	2008				351				351
DE									
EL									
HU	2008			66				488	554
IE	2008	200							200
IT	2008							36844	36844

For each Member State data relating to the most recent year are provided

	<i>year</i>	<i>death</i>	<i>accident</i>	<i>Financial aid</i>	<i>Repatriation</i>	<i>Illness / hospitalization</i>	<i>Arrest / detention</i>	<i>Other / not specified</i>	<i>Total</i>
LV	2008			27			111	3647	3791
LT	2008						3153	1360	4513
LU									
MT									
PL									
PT	2008							259	259
RO									
SK	2009	462		9				2870	3341
SI	2009	151	28				261	37	477
ES	2008				203		1998		2201
SE									
NL	2008							2360	2360
UK	2008							44443	44443
total									114651*

** In addition, in 2007-2009 Polish consular posts noted a total of 154230 cases of consular intervention in favour of Polish citizens*

Throughout the close collaboration with the national Rapporteurs, it was not possible to collect statistical data on consular protection/assistance for all of the EU countries for the reasons highlighted above, mainly the lack of public available information and reluctance of the Government officials to provide the required statistical data.

Due to the lack of an exhaustive country coverage, a complete assessment of the number of cases of consular assistance provided by the 27 EU countries to their own citizens and the citizens of other EU countries can be made only based upon assumptions/extrapolations that consider other relevant statistical data such as the number of travels in third countries made by the residents in each Member State per year and the ratio among these data as indicated, for example, in the Action plan 2007-2009 – doc. COM (2007) 767 – at p. 3.

Table 9: Number of travels in third countries made by residents in each Member State in 2008

	A- Number of departures of residents going abroad for all holidays and business (1 night or more) - geographical breakdown - Destination: all countries of the world	B- Number of departures of residents going abroad for all holidays and business (1 night or more) - geographical breakdown- Destination: 27 EU Member States	Column A - Column B = Number of departures of residents going abroad for all holidays and business (1 night or more) - Destination: third countries*
AT	7468278	5072588	2395690
BE	7951203	6514337	1436866
BG		na	na
CY	791027	617954	173073
CZ	6457600	4481349	1976251
DK	na	na	na
EE	483555	306057	177498
FI	4592000	3860000	732000
FR	19727979	12418421	7309558
DE	72966592	54495126	18471466
EL	1265208	730024	535184
HU	4353491	3296052	1057439
IE	6069000	5037000	1032000
IT	14577699	9470316	5107383
LV	927607	643628	283979
LT	1394949	855221	539728
LU	1190089	1035072	155017
MT	na	na	na
PL	5911000	4832000	1079000
PT	na	na	na
RO	na	na	na
SK	2828948	1701723	1127225
SI	1937304	556730	1380574
ES	7864583	5114610	2749973
SE	9523000	6809000	2714000
NL	15652000	12474000	3178000
UK	52922556	37778338	15144218
total	246.855.668	178.099.546	68.756.122

We assume that "all countries of the world" includes also the EU Member States so that: Column A - Column B = all countries of the world except the EU Member States = third countries

Source: Eurostat database: section Tourism; Tourism demand; Number of tourism nights; Number of tourism nights - geographical breakdown - annual data.

An additional issue to be assessed concerns the presence of the diplomatic representations in third countries. It is not possible to provide the relevant information based on a sole source⁶⁴, however, the websites of the Ministries of Foreign Affairs of

⁶⁴ The website (<http://www.travel-voyage.consilium.europa.eu>) that should provide such information is still under construction.

the EU countries usually provide a list of the diplomatic and consular representations. According to the Communication from the Commission on Justice, freedom and security in Europe since 2005: an evaluation of The Hague programme and action plan (doc. COM (2009) 263) *“an estimated 8.7% of EU citizens, or 7 million people, traveling outside the EU do so to countries where their Member State is not represented. A further 2 million EU citizens live in such countries”*.

In conclusion, on the basis of the information provided by the national Rapporteurs it seems that most of the EU countries do not consider necessary to collect precise data. On one hand, certain national Reports explain this decision on the basis of financial reasons. On the other hand, other EU countries are reluctant to provide precise and detailed information for reasons of public security or public sensitivity.

A possible explanation provided by one of the national Reports which could, though, apply generally to all of the EU countries, is provided by the national Report on **UK**: *“Apart from the additional resource allocation that it would take to collect and collate statistical data on these issues, it would appear that the United Kingdom has refrained from publishing this data because of national sensitivity. Indeed, the United Kingdom is reluctant to inform its own nationals of the financial cost of assisting EU citizens, in particular, because consular assistance is funded by British passport fees. But it would appear that the UK, like other Member States, prefers to keep statistical data confidential in order to prevent potential comparisons between itself and other Member States from being undertaken”*.

4. Consular (and diplomatic) protection in detail

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 8: Consular protection in detail

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 9: Diplomatic protection

All national Reports are assessing the domestic provisions on consular protection and assistance, briefly mentioning also diplomatic protection.

Hypertext index table 8 provides links to the relevant part of the national Reports dealing with consular protection and assistance.

Hypertext index table 9 provides links to the relevant part of the national Reports dealing with diplomatic protection.

On the basis of the information provided by the national Reports, it can be observed that the EU countries conferring a fundamental right to consular protection confer also a fundamental right to diplomatic protection to their citizens (see, e.g., the **Polish Report**: “*the 1997 Constitution ensures a general entitlement of Polish citizens to protection during a stay abroad. It is believed that this includes both consular assistance and diplomatic protection*”). Even if the legal literature⁶⁵ points out that diplomatic and consular protection are different as regards their nature, conditions and procedure⁶⁶, most of the national Reports mention that the principles governing consular protection apply also to diplomatic protection under their domestic legal orders and practice⁶⁷.

Under international law, despite the efforts of the International Law Commission (ILC)⁶⁸, the exercise of diplomatic protection is still subject to the discretion of the State of nationality, which will have the final, loosely scrutinised decision on when to exercise the right and who should enjoy the benefits of the exercise. It has to be pointed out that during the elaboration of the ILC draft articles on diplomatic protection, most of the EU countries fought for keeping diplomatic protection as one of their privileges. Art. 19 of the ILC draft articles on diplomatic protection sets out only a recommended practice for the States, namely that they should give due consideration to the remedy of diplomatic protection.

Under the EU law framework, the Court of first instance (CFI) has embraced a more progressive approach whereby the diplomatic protection is no longer a full right of the

⁶⁵ See full text of draft Article 1 of the UN Report of the International Law Commission 2006 (A/61/10). Amerasinghe, Lowe, V (Ed.). *Diplomatic Protection*, Oxford University Press, 2008, p. 45; Id., *Protection of Nationals Abroad*, International Comparative Law Quarterly, vol. 37, at p. 1002; Id., *Diplomatic Representations and Diplomatic Protection*, International Comparative Law Quarterly, vol. 51, at p. 726.

⁶⁶ “*Diplomatic protection may be exercised through diplomatic action or other measures of peaceful settlement. It differs from consular assistance in that it is conducted by the representatives of the State acting in the interest of the State in terms of a rule of general international law, whereas consular assistance is, in most instances, carried out by consular officers, who represent the interests of the individual, acting in terms of the Vienna Convention on Consular Relations. Diplomatic protection is essentially remedial and is designed to remedy an internationally wrongful act that has been committed; while consular assistance is largely preventive and mainly aims at preventing the national from being subjected to an internationally wrongful act.*” 2006 Draft Articles on Diplomatic Protection with commentaries, para. 9 of commentaries on Art. 1, p. 27. See also para. 10 of the commentaries on Art. 1, p. 27.

Former ECJ judge Jean-Pierre Puissech provided legal clarification by adding that there are fundamental differences between these two types of protection “*Diplomatic protection is always discretionary as the State is not obliged to endorse the citizens’ request while consular protection is a citizens’ right meaning that such assistance should always be provided*” (see Summary report of Public hearing of 29 May 2007 on the Green Paper on diplomatic and consular protection of Union citizens in third countries). In the same vein see also the European Parliament Working document on diplomatic and consular protection for citizens of the Union in third countries: “*There are, of course, differences between diplomatic and consular protection as regards their nature, structure and the triggering of their procedures: while consular protection may, at least in some cases, be an obligation, in the case of diplomatic protection one is always in the area of a discretionary power, and in any case in the area of a relationship between one State and another.*”

⁶⁷ Therefore, from the information made available by the national rapporteurs it seems that a uniform set of principles govern the procedure for assisting citizens in difficult situations.

⁶⁸ See full text of draft Article 1 of the UN Report of the International Law Commission 2006 (A/61/10). The Draft Articles have not changed the rule already established by the Permanent Court of Justice in the *Mavrommatis Palestine Concessions* case, where the Court held that “*a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels*”, see [1924] PCIJ Rep, Ser. A, No. 2, at 12. In extending such protection, reasoned the Court, a State was merely preserving its own rights; namely, “*its right to ensure, in the person of its subjects, respect for the rules of international law*”.

States, entirely at their discretion. In *Ayadi*⁶⁹ and *Hassan*⁷⁰, the CFI developed a limited duty on the EU countries to diplomatic protection given to their nationals and foreigners residing in their territory in the particular cases of smart sanctions imposed by the UN Security Council. This limited duty, previously proposed by the second Rapporteur of the ILC project on diplomatic protection and rejected by the members of the ILC⁷¹, finds application within the EU regional system. The limited duty of diplomatic protection does not bring anything new for the EU countries already conferring a fundamental right to diplomatic protection⁷², or to those EU countries that have supported this progressive approach in the ILC, such as Italy⁷³, this duty is of particular importance as regards those EU countries still arguing for a full discretionary power of the State to decide when and to whom to grant diplomatic protection [see the **UK, Finnish, Swedish Report**⁷⁴ and the UK's and the Nordic EU countries' observations brought in regard to the ILC draft articles on diplomatic protection⁷⁵ and the case of Germany where the German Constitutional Court has recognised wide discretion to the Government as to whether and to whom to grant diplomatic protection⁷⁶]. Therefore, as regards these latter States, despite their alleged full right of diplomatic protection, the CFI has established that as regards the protection of the fundamental right to fair hearing and effective judicial remedy, the EU countries have a duty to exercise diplomatic protection as regards their citizens and foreigners legally residing in their territory before the UN Sanctions Committee⁷⁷.

On the other hand, under international law, consular assistance in certain specific circumstances is expressly recognised by the ICJ as an individual right⁷⁸.

⁶⁹ Case T-253/02 *Chafiq Ayadi v Council of the European Union*, para 150: “The Member States are required to act promptly to ensure that such persons’ cases are presented without delay and fairly and impartially to the Committee, with a view to their re-examination, if that appears to be justified in the light of the relevant information supplied.” This limited duty of diplomatic protection is, according to para. 152 of the CFI’s judgment judicially reviewable – para. 152 “In ensure the full effectiveness of Community law, which may lead it to refrain from applying, if need be, a national rule preventing that result, such as a rule excluding from judicial review a refusal of national authorities to take action with a view to guaranteeing the diplomatic protection of their nationals.”

⁷⁰ Case T-49/04 *Faraj Hassan v Council and Commission of the European Union*, paras. 119, 120.

⁷¹ J.R.Dugard, *First Report on Diplomatic Protection* UN Doc. A/CN.4/506 (2000), at 27; see also ILC Debates UN Doc. A/55/10 (2000) at 157, para. 452.

⁷² **Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Portugal and Romania.**

⁷³ Italian proposals on draft Art. 2(2) – In cases of violation of fundamental human rights, such as the right to life, the prohibition of torture, inhuman or degrading treatment or punishment, the prohibition of slavery, or the prohibition of racial discrimination and when the individual is unable to resort to international judicial or quasi-judicial organs to receive reparation, Italy suggests that States have “a legal duty to exercise diplomatic protection.” UN Doc.A/CN.4/561/Add. 2 (2006), at 2-3.

⁷⁴ Particularly see the judgment of the English Court of Appeal in [Abbasi](#).

⁷⁵ J.R.Dugard, *First Report on Diplomatic Protection* UN Doc. A/CN.4/506 (2000), at 725.

⁷⁶ See case *Rudolf Hess v Federal Republic of Germany*, Case No. 2 BvR 419/80, 90 I.L.R.387 (1980) at 395 and 398.

⁷⁷ This solution was reached by the CFI, whose final decision was however annulled by the European Court of Justice establishing the principle of full judicial review of the Regulation even though they were mere implementation of the UNSC Resolutions.

⁷⁸ See the judgments of the ICJ in *LaGrand* and *Avena*, ICJ Report, respectively, 2001, p. 466 ff. and 2004, p. 12 ff. According to Art. 36(1)(c) of the Vienna Convention on consular relations, as interpreted by the ICJ in the above mentioned cases, the receiving State must inform ‘without delay’ the detained alien of his or her right to contact consular officials. In *Avena*, the International Court of Justice concluded that this obligation arises immediately upon receiving State officials learning (or suspecting) that the detained individual is a foreign national. Once notified of the detention, consular officials then have a right to visit and converse with their national and arrange for his or her legal representation, unless refused by the national, thus the authorities of the receiving States must not hinder this right of the consular and/or diplomatic officials.

If, in regard to the concepts of consular and diplomatic protection, there is sufficient and also coherent legal literature, pointing out the distinctions between these concepts, the same cannot be said about the possible distinction between the concepts of consular protection and consular assistance. As a matter of fact, only certain national Reports are very precise on the distinction between consular protection and assistance, and consider these two concepts as being distinct:

According to the **German** Report, in general it seems that the wording of Consular act seems to distinguish between consular assistance and consular protection, even though the act does not provide for a definition of these terms (in German ‘*Hilfe*’ and ‘*Schutz*’) it uses ‘consular protection’ only in the context of ‘Paragraph 6 - Assistance in cases of disaster’ which seems to suggest that consular assistance is a broader concept than consular protection. However, it seems that no cases and problems have arisen in this respect

The **Romanian** Consular Regulation (Government Decision No. 760/1999) in conjunction with the Vienna Convention on consular relations and the Government Decision No. 868/2008 provide a detailed definition of consular assistance and protection and the element which distinguishes consular protection from consular assistance. Consular assistance consists of an intervention from consular officials for the purpose of helping a Romanian or EU individual in a difficult situation, whose cause cannot be attributed to the authorities of the States of residence. Consular assistance includes *inter alia* paying visits, receiving, guiding and advising the Romanian and EU citizens on their problems as well as taking the necessary steps before the authorities of the State of residence (administrative organs, police, city hall, judicial authorities, etc). Consular protection, on the other hand, requires that the cause of the difficult situation where the Romanian or EU citizens find themselves in is due to the breach of law by the authorities of the State of residence. The measures taken by consular officials aim at helping the citizens to obtain reparation of the damages caused by the foreign public authorities.

According to the **Spanish** report, protection and assistance are sometimes used as interchangeable concepts. Yet “protection” arises when some intervention from consular authorities before local authorities of the receiving State is required. This can happen as a consequence of an illicit act of national authorities, such as the infringement of an international Treaty, and it is indeed the very essence of the consular functions as they have been understood along history. “Assistance” occurs whenever a Spanish citizen has suffered any type of adversity. Here, specific categories receive specific attention, such as detainees, the elderly, orphans, battered women and those living abroad with the necessary subsistence means. As this type of consular functions related usually to economic aid, they are more recent in time, since they respond to formulas typical of the Welfare State.

According to the **UK** Report, there is a critical distinction between diplomatic protection and consular assistance. Diplomatic protection is a State-to-State process by which a State may bring a claim against another State in the name of a national who has suffered an internationally wrongful act at the hands of that other State. There is, in addition, a further distinction between ‘diplomatic protection’ and ‘diplomatic representation’. ‘Diplomatic representation’ is ‘not a legal term of art.’ It is a communication, an expression of disapproval, from one State to another and the communicating State cannot demand a response. Diplomatic representation is also referred to as ‘consular protection’. Diplomatic representation can be seen in instances of prosecution and detention where, for example, a miscarriage of justice or fundamental violation of human rights has been demonstrated. Diplomatic representation, like diplomatic protection, is exercised in exceptional cases and all other local remedies must first be exhausted. Consular assistance is the provision of assistance that is provided by consular officials to citizens who are in difficulty overseas. In this respect, consular assistance is limited in nature and does not extend to formal ‘representation’ or ‘protection’. Consular assistance is wrongly referred to as ‘consular protection’ and ‘diplomatic protection’.

Finally, the **Irish** Report points out that Ireland prefers the phrase “consular assistance” to that of “consular protection”.

According to the national Report on **UK**, the content of Arts. 20(2)(c) and 23 TFEU is not clear, since it creates confusion whether it refers to all of the following concepts or only to certain of them: ‘*consular protection*’, ‘*consular assistance*’ and/or ‘*diplomatic protection*’. The absence of clarity and precision is then used as argument for the lack of direct effect of this provision. Consequently, the arguable absence of the right of EU nationals to invoke Arts. 20(2)(c) and 23 TFEU before national courts, legitimates, according to the national Report on **UK**, the approach of largely allocated discretion in the field of consular and diplomatic protection and the very limited power of the judiciary to scrutinise this field. Additionally, this terminological confusion is also invoked as an argument against the implementation of the list of obligations required from the EU countries under these Articles.

The arguable terminological confusion of Arts. 20(2)(c) and 23 TFEU can no longer be invoked as an excuse of non-implementation of the requirements imposed on the EU countries under these Articles or lack of direct effect for the following reasons:

Firstly, if before the entry into force of the Lisbon Treaty, it could have still been argued that the content of former Art. 20 TEC is not clear since it does not use expressly the concepts of ‘consular protection’ and ‘diplomatic protection’, but “[...] protection by the diplomatic and consular authorities of the Member States[...]”⁷⁹, after the entry into force of the Lisbon Treaty, the EU Charter on fundamental right has achieved the status of primary law. Art. 46 of the EU Charter is entitled “Diplomatic and consular protection” and in the explanation of this article, express reference is made to Arts. 20(2)(c) and 23 TFEU, therefore, the terminological confusion is clarified as regards the issues of whether these articles refer or not also to diplomatic protection.

Secondly, if, according to the domestic legislation, consular assistance and protection are two distinct concepts and the issue will be raised before a national court or tribunal, then, on the basis of Art. 267 TFEU, the latter judicial organs will have the possibility or obligation, according to whether there is or not any possibility of judicial remedy against its decisions under national law, to refer a preliminary question to the European Court of Justice which will thus have the opportunity to ensure a uniform interpretation of Art. 23 TFEU. Until such a preliminary reference is brought before the EU Courts, the EU countries cannot disregard the principle of supremacy of EU law and direct application of the Treaty provisions⁸⁰, by not ensuring a full and effective application of Art. 23 TFEU.

Despite the fact that the TEU and the TFEU use only the term “protection”⁸¹, it has to be noticed that: **(i)** in many EU countries this concept is used inter-changeably or at least intrinsically linked with the concept of “assistance” and **(ii)** the substantive scope of Art. 23 TFEU clearly results from the EU acts issued on this matter, such as the acts

⁷⁹ It has to be observed that former Art. 20 TEC as current Arts. 20(2)(c) and 23 TFEU did not expressly mention the concept of ‘diplomatic protection’. It has been argued that the use of the word ‘diplomatic’ in the context of “[...] protection by diplomatic [...] authorities of any Member State [...]” has led to the association that the article is talking of ‘diplomatic protection’. Such an association is erroneous according to the author, as neither diplomatic, nor consular organs usually have the competence to exercise diplomatic protection, see in this regard, Patrizia Vigni, *Diplomatic and Consular Protection in EU Law: Misleading combination or creative solution?*, EUI Working Paper Law 2010/11 Departemnt of Law, p. 10.

⁸⁰ Case 26/62 *N. V. Algemene Transport- en Expeditie Onderneming van Gend & Loos/Nederlandse administratie der belastingen* in *Reports of Cases before the Court*. 1963, p. 1 and Case 6/64 *Costa v ENEL* [1964] ECR 585.

⁸¹ See Art. 23 TFEU, as well as ex-Art 20 TEC, and Art. 46 of the EU Charter.

adopted by the Commission which always speak of the right to consular and diplomatic protection.

From the relevant documents adopted by the Commission, Council and the European Parliament on the issue of consular and diplomatic protection, it seems that a strict distinction between consular protection and assistance is not made, at least not in the sense mentioned by the national Reports on **Germany, Ireland, Romania, Spain** and the **UK**. The several definitions of consular protection given by the Commission in the 2007-2009 Action Plan: “Consular protection is the provision of support and assistance by a State to citizens abroad, either its nationals or those nationals to whom it has agreed to provide assistance. It can be provided by consular or diplomatic authorities.”⁸² and “ [...] protection by diplomatic and consular authorities is not limited to crisis situations, but *includes day-to-day assistance* to solve individual problems such as loss of passports, theft and serious accidents.”⁸³ and then by Art. 5 of Decision 95/553/EC, “[...] consular protection encompasses several strict and specific situations of consular assistance: assistance in cases of death; (b) assistance in cases of serious accident or serious illness; (c) assistance in cases of arrest or detention; (d) assistance to victims of violent crime; (e) the relief and repatriation of distressed citizens of the Union; and Member States are free to include in the material scope of consular protection other situations where citizens need assistance.” indicate that consular protection is to be understood as a concept encompassing several different situations where the EU citizens are in need of consular assistance, and thus the relation under the EU legal framework between consular protection and assistance is similar to a whole-part relationship.

4.1. Right to consular protection

In light of the information provided by the national Reports, it can be argued that there are five categories of EU countries according to the criterion of whether their domestic legislation is interpreted as providing a right to consular protection or whether it is not:

(1) EU countries having a *constitutional provision* that is widely accepted as providing a fundamental right to consular protection (**Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Portugal and Romania**) [see table 10]

In these cases, according to the national Reports, there is no domestic legislation providing an express right to consular protection as such. According to these Reports the right is conferred based on a constitutional provision stating in more or less exact words that: “*citizens abroad benefit from the protection of the State for the exercise of their rights*”⁸⁴. The national Report on Portugal points out that such a provision obviously does not directly establish an express right to consular and diplomatic protection as such. However, the national Rapporteurs and academia have rightly interpreted the concept of “*protection of the State*” stipulated in the specific constitutional provisions as encompassing a fundamental right to consular and diplomatic protection.

⁸² See footnote 18 in the Commission Action Plan 2007-2009.

⁸³ According to the Commission Action Plan 2007-2009, p. 3

⁸⁴ The citation is taken from the national Report on **Portugal**; the constitutional provisions of other EU countries convey the same idea (see the table with the exact constitutional provisions).

Table 10: National constitutional provisions on consular protection

BG	Article 25(5): Any Bulgarian citizen abroad shall be accorded the protection of the Republic of Bulgaria.
EE	§ 13. Everyone has the right to the protection of the State and of the law. The Estonian State shall also protect its citizens abroad. ⁸⁵
HU	Article 69(3): All Hungarian citizens are entitled to enjoy the protection of the Republic of Hungary while legally residing or staying abroad.
LV	Article 98: Everyone having a Latvian passport shall be protected by the State when abroad and has the right to freely return to Latvia.
LT	Article 13: The State of Lithuania shall protect its citizens abroad.
PL	Article 36: A Polish citizen shall, during a stay abroad, have the right to protection by the Polish State ⁸⁶ .
PT	Article 14: Les citoyens portugais qui séjournent ou résident à l'étranger jouissent de la protection de l'Etat pour l'exercice de leurs droits et sont obligés aux devoirs qui ne sont pas incompatibles avec leur absence du pays.
RO	Article 17: Romanian citizens while abroad shall enjoy the protection of the Romanian State and shall be bound to fulfil their duties, with the exception of those incompatible with their absence from the country.

(2) EU countries having a *legislative provision* that is interpreted by the national Rapporteurs and by the specific academia as providing a right to consular protection (**Denmark, Finland, Greece, Slovakia and Slovenia**);

The national legislative provisions interpreted as conferring a right to consular protection are included in acts adopted by the national Parliaments (**Denmark**⁸⁷, **Finland**⁸⁸, **Slovakia**⁸⁹ and **Slovenia**⁹⁰).

⁸⁵ According to the **Estonian** Report: “*The State has an obligation to provide consular protection notwithstanding the fact that there is no representation in the State where the citizen in need of consular protection is located at the moment, or perhaps, there are no diplomatic or consular relations with that State in the first place. In these cases, the State has to find a solution using other channels or representations of other states*”.

⁸⁶ According to the national Report, “*This provision creates an entitlement of **Polish** citizens to protection, and at the same time, an obligation of State authorities to protect. The entitlement includes the right to take a decision on whether to exercise or not to exercise that entitlement in a distress situation.*”

⁸⁷ Section 1(3) of Act No. 150 of 13 April 1983 on the Danish Foreign Service Act: “*The Foreign Service provides assistance to Danish citizens as well as assistance to Danish businesses in their commercial relations with foreign countries.*”

⁸⁸ Section 2(1) of the Consular Services Act of 1999: “*Unless a consular service is subject to other provisions, consular services referred to in Chapters 3 to 10 of this Act may be provided for a Finnish legal person or a Finnish citizen or for a foreign citizen residing permanently in Finland, who is in possession of or has been granted a permit to reside or work in Finland either permanently or in a comparable manner.*”

⁸⁹ According to the national Rapporteur, on the basis of Art. 14 of the Law No. 151/2010 on Foreign State Service, “*The Ministry of Foreign Affairs ensures protection of rights and interests of the Slovak Republic and its citizens abroad.*”

⁹⁰ Art. 24(1) of the **Slovenian** Foreign Affairs Act: “*A consulate shall perform the following functions: 1 protect the interests of the Republic of Slovenia and its citizens and legal entities, and conduct consular-legal affairs [...].*” In the same vein as Art. 14 of the Slovak Foreign Services Act, Art. 24(2) of the Slovenian Foreign Affairs Act has been interpreted by the national Rapporteur as establishing an

(3) EU countries having *no specific legislative provision*, however, according to the national Rapporteurs, the national academia argues that *consular protection is granted as a right based on the interpretation of the specific national legislation*, as a whole, and the relevant national case-law (**Italy, Sweden**);

(4) There are EU countries with no specific domestic provision that can be interpreted as conferring a right to consular protection to their citizens (**Germany and Greece**⁹¹). According to the national Reports on Germany and Greece, even if the national legislation has certain provisions on an obligation of the State to protect the right and interests of their citizens, the same legislative norms include a wide discretion of the State to decide whether to grant or not consular assistance. The discretion left to the States is so wide that a right as such cannot be recognised to the citizens. Another subgroup of EU countries that does not recognise a right to consular protection to their citizens, have, on the other hand, a *consular law*⁹² *regulating to a certain extent the field* (**the Czech Republic, France, Luxembourg, Spain**).

(5) EU countries having no statutory right to consular protection, rather *consular protection is given as a matter of policy* (**Austria, Belgium, Cyprus, Ireland, Malta, Netherlands and UK**). Among the Member States that provide consular protection as a matter of policy, **Austria's and Belgium**⁹³ approach is that consular support is a help for self-help; also **Cypriot** citizens finding themselves in emergency while abroad are advised to first contact their family and/or acquaintances back home, since they may be able to resolve any problem for them, or help them to do so, without any further assistance.

Therefore, even if only 8 EU countries stipulate the right to consular protection as a fundamental right given to their citizens, in the end all of the Member States regulate the field of consular protection and assistance even if in different ways and by adopting acts of different legal force. The fact that the consular protection is seen differently by the Member States, either as a fundamental right, a right based on a legislative provision, or left at the discretion of the Member States when and to whom to confer it, has led to opinions as the one stated in the [debates of the European Parliament of 4 February 2009](#) by the then President in Office of the Council: "*That is why the Treaty refers to consular protection as an 'entitlement' and not a 'right'*". At this point it has to be stressed that the discrepancies between the EU countries on whether consular protection is or not a right and whether they have or do not have discretion on when and to whom to give consular protection is not in itself capable of denying the character of fundamental right to consular protection given to EU citizens in equal conditions. Art. 46 of the EU Charter stipulates clearly as a fundamental right: '*Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.*' However, Art. 46 of the EU Charter is not in itself capable of conferring to an EU citizen the right to consular protection from an EU country that

obligation for the Ministry of Foreign Affairs' staff to ensure the protection of rights of the Slovenian citizens, which have, as a counter-part of the MFA' obligation, a right to consular protection.

⁹¹ Art. 52, par. 1, sub b) of Law No. 3566/2007: '*provide every possible assistance to **Greek** citizens and persons of Greek origin, protect their rights and interests [...]*'

⁹² The concept of law is to be construed largely as encompassing every act adopted by vote of the nationals of EU countries or the State authorities, i.e. Constitution, Law, acts adopted by the Government and Ministry of Foreign Affairs and other Ministries.

⁹³ Consular assistance is granted only in case of absolute necessity and if relatives or friends have been found unable to help.

does not internally confer a right to consular protection to its citizens. To illustrate the conundrums of the application in practice of the principle of non-discrimination stipulated by the aforementioned Art. 46 of the EU Charter, the following practical situation mentioned by the national Report on UK is illustrative:

“The **United Kingdom** recent policy is that if a British national travels to a particular country contrary to public authorities' advice not to travel in that country, then he/she may no longer be able to receive consular assistance. Thus, it may be problematic for the United Kingdom to provide consular assistance to EU citizens in third countries if they have travelled to a country that is contrary to the advice of the United Kingdom. Of course, the advice that is provided to British nationals may not be relevant to non-British nationals (these issues do, however, need to be taken into consideration if the European Commission establishes a European Consular Web Site).”

More information on the topic is to be found in Table 11.

Table 11: Right to consular protection

	<i>No right to consular protection</i>	<i>Right to consular protection</i>
<u>AT</u>	So far, no basic right to consular (and diplomatic) protection has been established under national law. Consular protection is considered as a service to the citizen (Foreign Ministry as a service organization [<i>Außenministerium als Serviceorganisation</i>]). The service is rendered as a policy commitment of the Foreign Ministry but not in fulfilling a legal obligation under Austrian law.	
<u>BE</u>	No right to consular (and diplomatic) protection exists. Consular protection is considered as a service to the own and EU citizens. There is no legal obligation for the Ministry for Foreign Affairs to perform consular services.	
<u>BG</u>		There is no explicit <i>right</i> to consular or diplomatic protection established by the Bulgarian positive law. However such right can be construed from the Constitution as far as Bulgarian citizens are concerned, and the applicable European legislation as far as European citizens are concerned as well as on the basis of the Administrative procedure act (for both cases).
<u>CY</u>	No right to consular (and diplomatic) protection exists. Consular (and diplomatic) protection is based on administrative practice.	
<u>CZ</u>	There is no right of Czech citizens and/or legal entities to consular protection.	
<u>DK</u>		Section 1(3) of Act No. 150 of 13 April

	<i>No right to consular protection</i>	<i>Right to consular protection</i>
		1983 on the Danish Foreign Service affirms, that assistance is provided to Danish citizens and Danish enterprises in their commercial relations with foreign countries. This provision is interpreted so as to include a right to consular assistance.
<u>EE</u>		Estonian citizens have a constitutional right to receive protection from the State when abroad, including consular protection.
<u>FI</u>		The right to consular protection is established in Section 2 of the Consular Services Act.
<u>FR</u>	Traditionally, there was not in France any subjective right of a person to diplomatic and consular protection. There was not any text of national law upholding such a right.	
<u>DE</u>	A right to diplomatic and consular assistance and protection cannot be found in the Consular Act, as a discretionary element is contained in every provision of that Act. The State has discretion with regard to the question whether to grant diplomatic/consular protection. The individual could on the basis of the Basic Law only demand that this discretion is not abused so that the decision whether to grant such protection is unbiased and rational ⁹⁴ .	
<u>EL</u>	No basic right to consular (or diplomatic) protection has been established. Consular (and diplomatic) protection is provided on the basis of international obligations, as well as administrative practice.	
<u>HU</u>		The right to consular protection is declared by the Hungarian Constitution (Art 69 para. 3).
<u>IE</u>		Irish nationals have in practice the "equivalent to a legal right" to consular assistance abroad ⁹⁵
<u>IT</u>		Consular protection is granted as a

⁹⁴ *In praxis* such a right would often exist. This is so since, not granting such assistance or protection in cases of emergency like e.g., lost passport, or serious illness etc. would nearly always amount to an abuse of discretion.

⁹⁵ **Ireland** does not provide consular assistance as a matter of law, but as a matter of policy. Nonetheless, this has been qualified by the official promise (by the Department of Foreign affairs) that while there is no statutory right, in practice consular assistance by Ireland has "never been refused". It is for this latter reason that it can be said that there is an "equivalent to a legal right": in other words, it is as if there were a statutory entitlement.

	<i>No right to consular protection</i>	<i>Right to consular protection</i>
		legal right
<u>LV</u>		Consular protection is classified more as a right rather than administrative practice.
<u>LT</u>		The Constitution denotes the obligation of the State of Lithuania to protect its citizens abroad.
<u>LU</u>	In Luxembourg, no right to consular (and diplomatic) protection exists as such. However, Article 16 § 2 of the “ <i>arrêté grand-ducal</i> ” concerning settlement of consular service and introduction of certain taxes to be perceived by members of the consular administration states that consuls “owe help and protection to Luxembourgian citizens living abroad.	
<u>MT</u>	In the Maltese legal system there is no specific right to consular protection; this is provided as a matter of practice. Consular protection cannot be demanded as a matter of right, but is a privilege which may be withheld at the discretion of the Minister of Foreign Affairs.	
<u>PL</u>		The basic right of Polish citizens during a stay abroad to the protection by Polish authorities is embodied in the Constitution of 1997. This provision creates an entitlement of Polish citizens to protection, and at the same time, an obligation of State authorities to protect.
<u>PT</u>		The Portuguese Constitution does not directly establish a basic right to consular or diplomatic protection, although such right may be considered to be implicit in Article 14 CRP where it is stated that Portuguese citizens abroad benefit from the protection of the State for the exercise of their rights. The Portuguese Consular Regulation of 1997 establishes a duty on the part of consular missions to provide consular protection to Portuguese individuals and corporations
<u>RO</u>		Romanian citizens have a fundamental right to consular and diplomatic protection.
<u>SK</u>		No right to consular protection is expressly provided in a legal act, however, according to Art. 14 of the Competence Law, the Ministry shall insure protection of rights and interests

	<i>No right to consular protection</i>	<i>Right to consular protection</i>
		of the Slovak Republic and its citizens abroad. Consequently, consular functions are perceived as an obligatory commitment towards the citizens.
<u>SI</u>		The Slovenian Foreign Affairs Act does not use the expression “right to consular protection”. Nevertheless, it provides that a consulate of the Republic of Slovenia shall among other functions protect the interests of the Republic of Slovenia and its citizens and legal entities. This can be interpreted as establishing, as its counter-part, a right of individuals to request such protection.
<u>ES</u>	In Spain there is no <i>subjective</i> right to receive consular (and diplomatic) protection, and therefore there is no <i>subjective</i> right to receive an economic aid. Although there are some general guidelines for this, administrative decisions in this area are discretionary	
<u>SE</u>		Swedish citizens are entitled to consular protection
<u>NL</u>	There is no right to consular assistance under Dutch law and the consular services can decline a request for assistance	
<u>UK</u>	Consular assistance is based on policy and not legal right. The United Kingdom is not under a legal obligation to provide consular assistance.	

4.1.1. Scope of consular protection *ratione personae*

The subsequent Table presents the information on the situation in each of the EU countries on the persons entitled to receive consular protection from the respective EU countries. It was analysed by the national Rapporteurs whether non-EU family members, refugees, stateless persons and long term resident persons fall under the *ratione personae* scope of consular protection in each of the national legal orders.

Table 12: Scope of consular protection *ratione personae*

AT	Consular (and diplomatic) protection is provided only for Austrian and EU-nationals. In general, consular protection is not extended to family members who are not nationals of a Member State. It is also not extended to other categories (e.g., recognized refugees, stateless persons or persons with resident permits). Exceptions exist in cases of evacuations.
BE	In general, consular protection is neither extended to family members who are not nationals of a Member State nor rendered to bi-national in the State of their other nationality. It is also extended to recognized refugees but not to persons with resident permits. Exceptions exist in cases of evacuations.
BG	In general, consular protection is not extended to family members who are not nationals of a

	Member State. It is also not extended to other categories (e.g., recognized refugees, stateless persons or persons with resident permits). It is difficult to construe the Constitution and the Administrative Procedure Act (APA) to oblige missions to protect family members of EU citizens who are not EU citizens themselves, recognized refugees, stateless persons or any other persons who are not covered by Art. 23 TFEU. Thus, the APA is in principle applicable to any foreigners who are in Bulgaria or are participants in administrative proceedings before its authorities outside it (Art. 3). This seems to extend the APA protection to all such persons, but only if they already are in Bulgaria. With regard to the diplomatic and consular missions APA will apply only after they have started proceedings, but non-nationals and non-Europeans must have substantive ground to start such proceedings and the sector-specific legislation generally does not provide such.
CY	There are no specific provisions regarding non-nationals, long term residents or recognized refugees apart from those cases where there is a legal connection with a Cypriot citizen. The basic link is citizenship. In the absence of such link there is no obligation on the State, but as a matter of policy if the applicant is legally residing in an EU country or has the recognized status of a refugee, then he/she will receive the same treatment and protection as a Cypriot/EU citizen. Cyprus extends consular protection to family members, i.e., the spouse and children up to 18 years old of the Cypriot national, only exceptionally and under specific circumstances, such as in case of emergency evacuation.
CZ	According to European Citizen Guideline, the Czech Republic does not extend consular protection to Union citizen's family members who are not nationals of a Member State or to long-term or permanent residents of these unrepresented Member States. There is no information whether the Czech Republic provides consular protection to its own recognized refugees and/or to its permanent or long-term residents. Similarly there is no evidence about both assistance and refusal to assist to closest relatives (husband and wife, minor children) of Czech citizens.
DK	Assistance is provided to Danish nationals and aliens permanently residing in Denmark, unrepresented Nordic nationals and aliens permanently residing in the other Nordic countries and citizens of unrepresented EU Member States. In general, consular protection is not extended to family members who are not nationals or permanent residents in a Member State. Assistance to such family members is subject to consent by the home State of the EU citizen in question. Exceptions may exist in cases of evacuations.
EE	The Consular Act extends limited consular protection to non-citizens who live in Estonia on the basis of a residence permit or right of residence and to whom an Estonian alien's passport has been issued under the Identity Documents Act. As a rule, such aliens are State-less persons permanently living in Estonia, but under exceptional circumstances an alien's passport may be issued also to a foreigner. The Identity Documents Act emphasizes that an alien's passport does not grant the holder the right to the protection of a foreign mission of Estonia unless otherwise provided by law or an international agreement. The Consular Act speaks explicitly of only one form of consular assistance provided to aliens, namely the issue of permit of return. Generally, Estonia does not extend consular protection to European Union citizen's family members who are not citizens of a Member State. However, exceptions have been made under special circumstances
FI	Pursuant to Section 2 of the Consular Services Act, "consular services [...] may be provided for a Finnish legal person or a Finnish citizen or for a foreign citizen residing permanently in Finland, who is in possession of or has been granted a permit to reside or work in Finland either permanently or in a comparable manner." Under special circumstances consular services may also be provided for other foreign citizens
FR	Consular protection cannot be granted in principle to any person other than a French or a European citizen and in particular, it can not be enjoyed by refugees or stateless people.
DE	The Consular act formally covers only German nationals and in certain cases their descendants and family members living or who have lived a certain time together with the German national. However, this scope is extended by the circulars of the Foreign Office in

	order to include EU nationals. The rules regulating consular assistance and protection do not extend to long-term residents and refugees.
EL	In general, consular protection is not extended to family members who are not nationals of a Member State. However, Greece examines under a positive attitude the possibility of granting consular assistance to non Greek citizens, in particular to family members of Greek citizens who do not have Greek nationality. Consular protection is not extended to other categories (e.g., recognized refugees, stateless persons or persons with resident permits).
HU	Consular protection is provided to Hungarian nationals and Union citizens. As a main rule (and according to the relevant legal regulation), consular protection is not extended to family members who are not nationals of a Member State. However, in practice the Department of Consular Affairs of the Hungarian Ministry of Foreign Affairs takes into consideration the fundamental principle of family unity. Individuals belonging to other categories (such as refugees and stateless persons) are not provided consular protection either.
IE	In principle, Irish consular protection (assistance) is only provided for Irish nationals. Consular protection is not extended to recognised refugees, stateless persons or persons with residence permits as such even if ordinarily resident in Ireland and holding an Irish-issued travel document (under the international treaty law relating to status of refugees and stateless persons). However, the official booklet says that Irish consular officials “will always do their best to provide assistance if requested to by a non-national who is a resident of, or has longstanding and close ties to Ireland”. Particularly in the case of natural disasters, Ireland would take a more flexible approach to non-EU nationals on a case-by-case basis, particularly if it is one of the few consular missions in a particular State.
IT	Consular (and diplomatic) protection is provided only for Italian citizens and for EU-nationals. Art. 56, <i>Decreto Presidente della Repubblica 18/1967</i> and Art. 28, <i>Decreto Presidente della Repubblica 200/1967</i> allow, however, to assist also persons who do not have Italian citizenship (like, for example, recognized refugees, stateless persons or persons with resident permits) in case of urgency and need.
LV	Consular protection extends not only to Latvian citizens but also to all passport holders issued by Latvia. The assistance is extended to family members of Latvian passport holders but only in crisis situations.
LT	As a general rule consular assistance is provided to citizens of the Republic of Lithuania, however the Consular Guide expands the provisions of the Law Consular Statute and foresees the possibility to provide the aid for stateless persons legally being in a foreign State in possession of a permit for permanent residence in the Republic of Lithuania. Lithuania does not extend consular protection to the family members of the EU citizens who are not nationals of a Member State, except in the case of evacuation.
LU	Consular (and diplomatic) protection seems to be provided only for Luxembourgian and EU nationals. Nothing is officially said about the protection of family members who are not Luxembourgian or nationals of an EU Member State. However, in practice, it is said that Luxembourg will provide assistance to the family members of the Luxembourgian citizen, if they are not national of an EU Member State.
MT	Malta implicitly recognises that every national, refugee and stateless person has a right to consular protection and, through the application of reciprocal arrangements, does not distinguish between residents, relatives and foreigners.
PL	Consular protection is guaranteed in an express manner to Polish citizens only. The legislation does not extend the right to be protected to non-Polish family members of a Polish national. In consular practice such assistance might be provided.

	Polish law so far does not expressly provide for assistance to persons who are granted refugee status in Poland or benefit from other forms of protection, either. In consular practice, all persons who possess a Polish travel document will be considered by consular officers as entitled to basic consular protection that however will, normally, not involve any financial assistance.
PT	In principle, consular protection is not extended to family members who are not nationals of a Member State of the European Union, but the practice has been to provide assistance to the families of Portuguese/Union citizens as a whole, irrespective of the nationality of some of its members, in emergency cases like natural disasters or civil and military unrest.
RO	The <i>ratione personae</i> scope of consular assistance and protection encompasses Romania's own nationals, the Union citizens and stateless persons with permanent residence in Romania. As regards refugees, they enjoy limited consular protection and assistance based on the national legislation. However, the recent approach of the Romanian public authorities has been to grant consular assistance and protection to the refugees in the same way as for the Romanian citizens. There is not yet a coherent and long established practice on the subject of consular assistance and protection given to refugees. In emergency cases, like natural disasters or civil and military unrest, the practice has been to provide assistance to the families of the Romanian/Union citizens as a whole, irrespective of the nationality of some of the family's members (however, this does not entail allowing entrance to the Romanian territory to foreigners that require visas for entering the Romanian territory).
SK	In general, consular protection is not extended to family members who are not nationals of a Member State. It is also not extended to other categories (e.g., recognized refugees, stateless persons or persons with resident permits).
SI	Under the Foreign Affairs Act only Slovenian nationals and other EU citizens are entitled to consular protection. Exceptions exist in individual cases, particularly in cases of evacuations. Decisions to offer consular protection also to non-nationals (e.g., family members) are made on a case-by-case basis when the applicant fulfils conditions to legally enter Slovenia as set forth in the Law for Foreigners. In practice the term family members includes spouses and children. If a situation of extreme urgency arises, non-nationals can receive a visa at the border.
ES	Spanish nationality is a pre-requisite for consular protection and assistance. This type of protection is not extended to other categories, such as recognized refugees, stateless persons or persons with resident permits
SE	In general, Swedish citizens living in Sweden, refugees and stateless persons living in Sweden are entitled to consular protection. Consular protection can be extended to Swedish citizens living abroad and other foreigners living in Sweden on particular grounds, comparable to the principal groups covered by the Law (SFS 2003:491) on Consular Economic Aid.
NL	Consular assistance is available to Dutch nationals, to first grade relatives of Dutch Nationals (spouses, parents and children, according to Dutch law), to other EU nationals and, in a limited manner, to individuals with a residence permit in The Netherlands. This latter category would include refugees and stateless persons, as long as they reside lawfully and habitually in The Netherlands. Individuals with a residence permit in The Netherlands should first contact their State of nationality and The Netherlands will only provide consular assistance in a limited way.
UK	Consular assistance is not extended to non-British nationals or any other categories of persons, including British residents, non-British family members of British nationals, refugees and Stateless persons. The UK may offer diplomatic protection to non-British nationals in extreme cases and if the individual is present on diplomatic premises.

The main issues concerning the personal scope of consular protection under Art. 23 TFEU refer to three categories of individuals: **(i)** EU citizens, **(ii)** third country nationals

who are family members of Union citizens, and **(iii)** foreigners resident in the EU countries.

In the following paragraphs, the information provided by the national Reports on the topic of the *ratione personae* scope of consular and diplomatic protection is summarised and structured according to the aforementioned categories. Additionally, the main problematic areas are put forward for further consideration.

(i) EU citizens

In light of the approach taken by certain of the EU countries on dual citizens and the fact that certain of the EU countries are parties to the 1930 *Hague Convention on certain questions relating to the conflict of nationality laws*⁹⁶, while other EU countries are not, it is important to distinguish the situation of **(a)** EU citizens with single nationality from **(b)** EU citizens with dual nationality⁹⁷.

(a) EU citizens with single nationality

According to Arts. 20(2)(c) and 23 TFEU, the holders of the right to consular protection are the European citizens without distinction of nationality, age, sex, or other forms of discrimination. Despite the fact that the European citizenship has achieved a fundamental status for the nationals of the Member States⁹⁸, the European citizenship is not an independent concept, but it requires the prior existence of the nationality of one of the EU Member States. According to recent judgments of the Court of Justice, the conditions for acquiring the nationality of the Member States are still under the exclusive competence of the Member States, however, when exercising their powers in the sphere of nationality, the Member States have to show due regard to fundamental principles of Union law such as the principle of proportionality⁹⁹.

All national Reports have mentioned that they confer consular protection to Union citizens in the same conditions as to their nationals; the emphasis on “the same conditions” concept was brought by the Member States treating consular protection as a matter of policy, in order to make clear that reverse discrimination and increased obligations for these Member States will not occur on the basis of Art 20(2)(c) TFEU. In addition to the wording of Art. 20(2)(c) TFEU argument, a further explanation brought by these Member States for the rejection of an approach whereby they will have to confer to Union citizens a right to consular protection or increased consular assistance then to their own national is that the function of consular missions is secured from taxes paid by the nationals of the respective States. As a concluding remark it can be observed that almost all the Member States argue to have the same level of discretion in regard to other Union citizens as they have in regard to their own citizens particularly as regard to when, to whom to confer consular assistance and choice of the appropriate consular services. According to this view, the benefits acquired by the Union citizens

⁹⁶ **Belgium, Cyprus, Malta, Netherlands, Poland, Sweden and the UK.**

⁹⁷ Taking into account also the increase of Union nationals having dual nationality, the number of situations where an individual of dual nationality (one of the EU countries party to the 1930 Hague Convention and a third country nationality) turn to ask for consular and diplomatic protection from one of the other Member States that is present in the third country of his/her nationality and which is not party to the Hague Convention may increase, and consequently also consular shopping.

⁹⁸ See ECJ, [Case C-184/99 Grzelczyk](#) [2001] ECR I-6193, paragraph 31; [Case C-413/99 Baumbast](#) [2002] ECR I-7091, paragraph 82.

⁹⁹ See ECJ [Case C-369/90 Micheletti and Others](#) [1992] ECR I-4239, paragraph 10; [Case C-179/98 Mesbah](#), [1999] ECR I-7955, paragraph 29; [Case C-192/99 Kaur](#) [2001] ECR I-1237, paragraph 19; and [Case C-200/02 Zhu and Chen](#) [2004] I-9925, paragraph 37 and see the recent Opinion of AG Sharpston in [Case C-34/09 Ruiz Zambrano](#).

after the entry into force of the Maastricht Treaty seems to be according to the national Reports only that the Union citizens receive the same amount of discretion and not higher than the nationals of the Member State providing consular assistance.

(b) EU citizens with dual nationality

As regards consular assistance given to bi-nationals by the EU countries, few of the national Reports expressly touch this topic. The Member States¹⁰⁰ that have a very clear approach of this field are: **Belgium, Ireland, UK**. The national Reports of these Member States provide that as a general rule consular protection is not extended to dual nationals in the State of their other nationality. However, an exception is mentioned by the **UK** Report if there is a special humanitarian reason, and only after all other routes have been exhausted and the other State of nationality has consented to the UK's exercise of assistance. A humanitarian reason includes cases involving minors, forced marriages and the death penalty. However, if the individual having dual nationality travels with his/her Irish or UK passport, meaning that it enters the territory of the other country of his/her nationality with the Irish or UK passport, then, as a matter of policy, formal consular assistance is expected to be provided by **Ireland** or **UK**, as authorities of his/her State of nationality. The **Belgian** and the **Lithuanian** Reports refer also to the specific case of consular assistance in cases of arrest or detention, when consular assistance is not provided to holders of double nationality if the person is arrested in the State whose citizenship he/she possesses.

The national Reports do not detail whether no consular assistance at all can be exercised for an individual having also the nationality of the State where the arrest/detention occurred or only certain consular services are precluded. According to the norms of international law, i.e., Art. 36(1)(c) of the Vienna Convention on Consular Relations and the judgments of the ICJ in the *LeGrand* and *Avena* cases interpreting the meaning of this Article, in the specific circumstances of a detained/arrested individual, two rights and a corresponding obligation result from Art. 36 of the Vienna Convention: the right of the detainee/arrested to be informed without delay by the authorities of the receiving States of his right to ask them to contact the consular mission of his State of nationality which on its turn has the right to visit and converse with their national and arrange for his or her legal representation, unless refused by the national. However, according to the general wording used by the **Belgian, Lithuanian, Irish** and **UK's** Reports¹⁰¹, it seems that neither of their consular officials can exercise these rights and obligation for a dual national arrested/detained by the State of his/her other nationality.

As regards diplomatic protection exercised by the EU countries to dual nationals, the aforementioned countries adopted the same approach on exercise of consular assistance for dual nationals also for the exercise of diplomatic protection. The general rule under

¹⁰⁰ In addition, the national Report on **Slovenia** mentions that there is no specific rules concerning protection to persons of dual nationality. According to the Report on **Latvia**, "*the Latvian Citizenship Law provides that those who were deported during or who took refuge after the Soviet occupation in 1940 could by exception register as Latvian citizens by July 1995 without losing the other nationality. Other than that, dual nationality is not accepted*".

¹⁰¹ In the case of **UK**, the only exception being a case of arrest/detention for a conviction having as a sanction death penalty, which is considered a humanitarian case, when consular assistance can be provided by the UK consular or diplomatic officials.

international law is that a State of nationality may not exercise diplomatic protection in respect of a person against a State of which that person is also a national¹⁰².

However, Art. 7 of the ILC Draft Articles on Diplomatic Protection establishes an exception, namely, when the claimant State shows that its nationality is predominant, both at the time of the injury and at the date of the official presentation of the claim, a diplomatic protection can be exercised also against the State of other nationality of the injured person. However, this exception is not yet a customary rule of international law, therefore, it does not bind the Member States to recognize under their national legislation an exception from the general rule which prohibits diplomatic protection against the State of other nationality.

(ii) Third country nationals who are family members of Union citizens

In general, the national Reports mention that consular assistance is not extended to third country nationals (TCNs) who are family members of Union citizens. Therefore, it seems that the Member States see the right embodied in Art. 20(2)(c) TFEU as a right to the Union citizens which cannot be generally extended also to their family members who are not Union citizens.

However, in exceptional circumstances- emergency evacuation- assistance is also granted to non-EU family members: **Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovenia, Netherlands, UK**. The fact that consular assistance is provided to non-EU family members in cases of emergency evacuation, does not mean that the latter are exempted from obtaining a visa to enter the territory of the respective Member State, only that, as according to the national Reports on Romania and Slovenia, they will benefit of a faster process of obtaining the visa (**Romania**), or they can receive the visa at the border (**Slovenia**).

Certain of the national Reports mention that their EU countries confer in general consular assistance to family members who are non-EU nationals (**Sweden** and **Malta**). However, **Sweden** is a very interesting case, as according to the **Law on Consular Disaster Response** entered into force on 1 August 2010, only non-EU family members of the citizens of Denmark and of the other Contracting Parties to the Helsinki Treaty are entitled to consular assistance under this Law. The Union citizens are mentioned as holders of the right conferred by this Law, but their non-EU family members are not. **Denmark** will also extend assistance to the non-EU family members of Union citizens, however, only upon the consent of the home State of the Union citizen in need of assistance. There is no need of consent only in cases of emergency evacuations.

Only the national Reports on **Cyprus** and **Slovenia** provide a definition for the concept of family member which is limited to the nuclear family: children under 18 years old of the EU nationals had with the non-EU family member and the spouse of the EU national.

Non-EU family members may obtain consular assistance also in their quality of permanent residents of EU countries, when such services are recognized to permanent residents [see below] and of course after fulfilling the conditions laid down in the national legislation. However, in this situation, they will receive consular assistance not

¹⁰² See Art. 4 of the 1930 Hague Convention on certain questions relating to the conflict of nationality laws: “A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.” The same general rule has been maintained also by the ILC Draft Articles on Diplomatic Protection, Art 7.

for their family tie with the Union citizen but because of the special tie resulting from permanent residence within the EU country.

Taking into consideration these circumstances, the Member States have recognized a limited privilege to non-EU family members due to their close tie with a Union citizen. Whether the restrictions imposed by the Member States to the extension of consular protection to nationals of third countries are in conformity with the principle of proportionality has not yet been assessed by the Union Courts, however, the national courts are competent to address such a question, if it will be relevant for the case lodged before them. The entitlement of non-EU family members to consular assistance can be inferred by analogy from the case law of the Union Courts in the field of the other rights of Union citizens. As a first example, the right to reside within the Union has been recognised to family members of Union citizens that are third country nationals, as a privilege given to the TCNs on the basis of firstly the fundamental status of nationals of the Member States' of the Union citizen and then the family link existent between the TCNs and the Union citizens ([Case C-60/00 Carpenter](#)).

Another question that has to be considered in light of the information made available by the national Reports is whether a Member State that confers consular assistance to a TCN family member of one of its citizens has the obligation to confer the same consular assistance also to the TCN family member of the citizens of the other Member States. The following Union legislation and case law supports the idea of an obligation of the Member States that confer to TCNs that are family members of other Union citizens the same consular assistance that they give to the TCNs that are family members of their own nationals:

- Directive 2004/38, in recital 5: 'the right of all Union citizens to move and reside freely within the territory of the Member States should, if it is to be exercised under objective conditions of freedom and dignity, be also granted to their family members, irrespective of nationality'.
- Para. 67 of Sharpston Opinion in *Ruiz Zambrano*¹⁰³ "In 1992, the Maastricht Treaty introduced European citizenship as a novel and complementary status for all Member State nationals. By granting to every citizen the right to move and reside freely within the territory of the Member States, the new Treaty recognised the essential role of individuals, *irrespective of whether they were economically active*, within the newly created Union. Each individual citizen enjoys rights and owes duties that together make up a new status – a status which the Court declared in 2001 was 'destined to become the fundamental status of nationals of the Member States'".
- The Court stressed that citizenship of the Union is intended to be the fundamental status of nationals of the Member States¹⁰⁴. Art. 20(2) TFEU attaches to that status the rights and duties laid down by the Treaty, including the right to rely on Art. 18 TFEU in all situations falling within the scope *ratione materiae* of EU law¹⁰⁵. Thus, the Member States must, when exercising their powers in the sphere of nationality, have due regard to EU law¹⁰⁶.

¹⁰³ [Case C-34/09 Ruiz Zambrano](#).

¹⁰⁴ See ECJ, [Case C-184/99 Grzelczyk](#) [2001] ECR I-6193, paragraph 31; [Case C-413/99 Baumbast](#) [2002] ECR I-7091, paragraph 82.

¹⁰⁵ See ECJ, [Case C-85/96 Martínez Sala](#) [1998] ECR I-2691, paragraph 62, and [Case C-403/03 Schempp](#), [2005] ECR I-6421 paragraph 17.

¹⁰⁶ See ECJ [Case C-369/90 Micheletti and Others](#) [1992] ECR I-4239, paragraph 10; [Case C-179/98 Mesbah](#), [1999] ECR I-7955, paragraph 29; [Case C-192/99 Kaur](#) [2001] ECR I-1237, paragraph 19; and [Case C-200/02 Zhu and Chen](#) [2004] I-9925, paragraph 37.

(iii) Foreigners resident in the Member States

There are three categories of foreigners resident in the Member States who have to be taken into consideration for the purpose of the application of Art. 23 TFEU: **(a)** long-term residents, **(b)** stateless persons, and **(c)** refugees.

(a) Long-term residents

The national Reports do not usually use the term “long-term resident”, but “permanent resident” or “foreigner resident”. The following national Reports mention that their respective EU countries confer consular assistance to long-term residents or individuals having a similar status: **Cyprus, Denmark, Estonia, Finland, Ireland¹⁰⁷, Latvia, Malta, Sweden, Netherlands¹⁰⁸**. According to the national Report on Hungary, LTR who loose their passports are entitled to apply for a travel document valid for a single return journey to Hungary.

(b) Stateless persons

The Lisbon Treaty has introduced for the first time a provision whereby it clarifies, uniformly the status of stateless persons in the Union. According to Art. 67 TFEU, stateless persons are to be considered third country nationals. The following national Reports mention that their respective EU countries confer consular assistance to stateless persons: **Estonia¹⁰⁹, Lithuania, Malta, Romania and Sweden**. Except Sweden, all the other Union countries confer consular assistance to stateless persons only if they are permanent residents in their territory. The national Report on **Sweden** mentions only stateless persons living in Sweden.

(c) Refugees

The following national Reports mention that their respective EU countries confer consular assistance to refugees: **Belgium, Cyprus, Malta, Romania¹¹⁰ and Sweden**.

¹⁰⁷ According to the [official booklet](#) that says that **Irish** consular officials “*will always do their best to provide assistance if requested to by a non-national who is a resident of, or has longstanding and close ties to Ireland*”.

¹⁰⁸ According to the national Report, individuals with a residence permit in the **Netherlands** should first contact their State of nationality while the Netherlands will only provide consular assistance in a limited way.

¹⁰⁹ The number of stateless persons that are permanent residents in **Estonia** and **Latvia** is high, due to the specific situation adopted by these countries on the individuals of Russian origin; this situation has to be taken into consideration for the assesment of the personal scope of Art. 23 TFEU, as highlighted by D. Kochenov, “*European citizenship and the difficult relationship between status and rights*”, The Columbia Journal of European Law (CJEL), V 15/no 2, 169-237, at p. 205: “*Since not all the residents of the EU travelling abroad are European citizens, it is difficult to understand why the right to consular protection is construed in such way that it excludes persons without any nationality residing in the EU. After the recent Eastern enlargement of the EU to accommodate, inter alia, the Baltic states of Latvia and Estonia, the population of permanent residents without any nationality rose in the Union considerably. Why should a person permanently residing in the EU and traveling on a Latvian or Estonian “non-citizen’s passport” [Such a document specifies that the bearer is not under protection of the issuing State] be refused protection under Article [23 TFEU]? Such exclusion looks particularly inhumane in those situations when recourse to Article [23 TFEU] rights is most likely to occur, such as the South-East Asian tsunami and other natural disasters or military conflicts.*”

¹¹⁰ The recent approach of the **Romanian** public authorities has been to grant consular assistance and protection to the refugees in the same way as for the Romanian citizens. There is not yet a coherent and long established practice on the subject of consular assistance and protection given to refugees.

4.1.2. Remedies against a refusal to provide consular assistance

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 10: Remedies against a refusal to provide assistance

The present section of the national Reports assesses the remedies available under the national legislations against the refusal of the consular and diplomatic officials to provide consular protection to nationals of their respective EU country. The assessment is necessary for the purpose of finding out whether there is in each of the Member State a legal framework endowed with judicial guarantees capable of ensuring effective consular protection for individuals.

Austria

There is no right for the citizens to appeal in case of refusal of consular protection.

Belgium

Under the Belgian law, consular protection is considered as a service to the own and EU citizens. According to the national Report, there is no legal obligation for the Ministry of Foreign Affairs to perform these services. This means that no appeal is possible if an embassy or consulate does not provide consular protection or assistance.

Bulgaria

On the basis of the Administrative procedure act, the aggrieved citizen may sue the diplomatic or consular mission for failure to act, for implicit refusal, for damages and for illegality of the action (however this legal possibility has not been tried so far). The other possible way is to file a complaint to the Ombudsman for any case of maladministration by the consular services (however this was never tried as well).

Czech Republic

According to the national Report, there is no appeal procedure against a refusal of a consular or diplomatic official to provide protection.

Cyprus

On the basis of the information provided by the national Report, it seems that there is an internal appeal process by way of which a complaint can be filed at the MFA and there is also the possibility of petitioning the “Commissioner for Administration-Ombudsman”. The decisions of the Ombudsman are not legally binding, while the MFA is not in any way clarifying whether its actions relating to consular protection are judicially reviewable. The jurisprudence of the Supreme Court has not so far examined the issue as no such case has arisen.

**Denmark**

Complaints about inadequate assistance are handled by the Ministry of Foreign Affairs. As a last resort, a complaint can also be lodged through the legal system.

**Estonia**

There is no special appeal procedure against a refusal to provide consular protection, but general Administrative Procedure Act applies to administrative proceedings prescribed in the Consular Act, taking account of its specifications. A person who finds that his rights are violated by an administrative act or in the course of administrative proceedings may file a challenge under Administrative Procedure Act.

If the person was refused consular protection, he should be able to contest the relevant decision with the consular post or bring the issue before the Minister of Foreign Affairs who exercises over administrative acts of the consular post. If the challenge is not successful and the person still thinks that his rights were violated, he may take the matter to an administrative court in Estonia. The decision by a consular officer to provide or to refuse to provide financial assistance without security or the decision by the Minister of Foreign Affairs to release a person from the refunding obligation or to reduce the sum to be refunded cannot be contested in a court.

**Finland**

The citizens may appeal as stipulated under the Administrative Judicial Procedure Act. A complaint can be lodged also before the Ombudsman. The courts are not competent to review the appeal for financial assistance under the Consular Services Act.

**France**

According to the national Report, the French authorities' decision of refusing diplomatic protection to a person is in principle a governmental act (*acte du gouvernement*) which is impossible to appeal under the French administrative jurisdiction.

**Germany**

The German Constitution stipulates a right to judicial review of all State actions if these actions interfere with individual rights. As the consular officials are part of the federal administration the Federal Act on Administrative Procedure (*Bundesverwaltungsverfahrensgesetz*) and the Act on Procedures before Administrative Courts (*Verwaltungsgerichtsordnung*) are the legal sources which regulate the remedies against decisions and actions of consular officials. These acts do not distinguish between Germans and Non-Germans. Before a complaint can be lodged before the Administrative Court in Berlin (the seat of the Federal government), the recipient of the administrative act has to usually lodge a written complaint to the authority within 1 month after he has been notified. The authority can either remedy the situation or submit the complaint to the higher authority. The higher authority then has to decide whether the complaint should be rejected. If the complaint is rejected it notifies the complainant in writing and with instructions on how to appeal before the administrative courts. However, this procedure does not apply to acts of consular officials of the foreign ministry, embassies, permanent representations and consulates. As Paragraph 2 and 3 of the Foreign Service Act (*Gesetz über den Auswärtigen Dienst*) clarify, these officials are part of the higher federal authority in foreign matters, the Foreign Service (*Auswertiger Dienst*), which is controlled by the foreign ministry. If administrative acts

are enacted by a higher authority, the complaint procedure (*Widerspruchsverfahren*) does not apply according to Paragraph 68 subparagraph 1 No. 1. Hence, an action before the Administrative Court in Berlin can be brought directly if the administrative acts were enacted by consular officials of the foreign ministry, embassies, permanent representations and consulates. If the claimant is not satisfied after he has passed through all stages of the administrative justice system, he might still lodge a fundamental rights claim before the *Bundesverfassungsgericht*. However, in this regard it should be recalled that there seems to be no fundamental right to diplomatic and consular protection. Hence, the only valid claim that may be made is one based on the principle of non-discrimination (Article 3 of the Basic Law) if the consular officials have offered assistance in other similar cases.

Hungary

In case a consular officer refuses to provide consular protection, the affected national can turn to the Department of Consular Affairs of the Ministry of Foreign Affairs. The Head of the Ministry can review the decision of the Department on appeal. An appeal against the decision of the Minister of Foreign Affairs can be filed at the Metropolitan Court of Budapest.

Ireland

According to the national Report, Irish courts cannot be accessed, whether at first instance or in an appeal procedure in any situations of denial of consular assistance. It could be said that there might be, as in the similar common law system in the UK (to which Irish law approximates), an administrative law remedy which could be pursued *via* the process of "judicial review", but this has never been put to the test in Ireland. More likely, complaints of refusal by Irish consular mission would be addressed directly to the Department of Foreign Affairs.

Italy

According to the national Report, complaints *against* the measures of the Consular Authority can be presented to the same Authority.

Latvia

In case a person considers that consular protection was refused without reason, s/he can follow the procedures set out in the Law on Administrative Procedure, i.e., submit a complaint to the MFA or submit an application before an administrative court.

Lithuania

Citizens may complain according to the procedure established under the *Law on the Proceeding of Administrative Cases*.

Firstly, an individual may submit a complaint against the public institution that has violated his rights or lawful interests and was requested to respect them. The institution must examine the complaint and adopt a decision following the procedure established under the national legislation.

In case an applicant contests the decision of the institution, he then may appeal to the Chief Administrative Disputes Commission, next, to an administrative court and, lastly, to the Supreme Administrative Court of Lithuania.

In the case of abuse of the powers, bureaucracy or violation of human rights and fundamental freedoms, the citizens may address to the *Seimas* Ombudsman's Office.

Poland

If a consul does not provide adequate protection when asked by Polish citizen who finds himself or herself in a distress situation, it is possible to take a legal action and bring this matter to the court's attention. If the citizen suffers damage due to the inaction on the part of the consul, he or she may claim compensation

Portugal

The remedies against a refusal to provide consular protection are: the right to lodge a complaint at the consular mission [every consular mission has a complaint book for the users of the consular services (Article 9, n. 3, RC)]; the right to appeal to the Minister of Foreign Affairs (Article 158 and 169, n. 2, Administrative Procedure Code); and the right to appeal to the administrative courts, which may condemn the Portuguese Administration to provide the consular protection prescribed by law and/or to pay damages or otherwise redress the injuries which the individual may have sustained (Article 2, n. 2, paragraphs i) and f) of the Administrative Courts' Code of Procedure).

Romania

Article 26(2) of the Consular Regulation and Articles 57-59 of Law No. 269/2003 *laying down the Statute of diplomatic and consular officials of Romania abroad* provide the specific relevant rules on responsibility of consular officials for fulfilling their duties, while the Civil Procedural Code and Law No. 554/2004 provide the general rules on the competent court to assess the complaint against the refusal to provide consular services. Art. 26(2) of the Consular Regulation and Arts. 57 and 58 of the Statute provide that consular officials that breach these Laws or do not fulfil in good faith their professional duties can be held to account based on the disciplinary, administrative, civil, or criminal law, depending on the specific case. The facts of the diplomatic and consular officials that attract their responsibilities and lead to sanctions based on the law will be assessed by the Council of Honour, who will make proposal to the Ministry of Foreign Affairs.

According to Art. 2(1) of the Civil Procedural Code, Romanian citizens can submit a complaint against the refusal of a consular official to provide consular services before the Court of second instance located in Bucharest. On the basis of Art. 2(2) of the Law No. 554/2004 *on administrative disputes* the refusal of a consular official to provide consular assistance or protection is considered a unilateral administrative act which can be contested before the courts competent to review administrative claims under the conditions set out in Arts. 7 and 10 of the above mentioned Law. Before going to the court, the applicant has to previously make a complaint against the refusal at the superior administrative authority of the consular official, thus the complaint will be addressed to the Romanian Ministry of Foreign Affairs. This previous administrative complaint is a compulsory procedural requirement before going to the administrative court. In case the MFA does not give redress to the applicant's complaint, then the latter can go before the administrative court in the conditions described above. The authority

to respond before the court for the actions of the consular officials will be the Ministry of Foreign Affairs, which, in case it is unsuccessful, can recoup the costs of the proceedings and of the damages paid to the applicant from the diplomatic or consular official brought before the court. In addition to the above mentioned possibility of redress, a Romanian citizen can file a complaint before the Ombudsperson on the basis of the Constitution which envisages consular protection as a fundamental right of the Romanian citizens.



Slovakia

According to the national Report, the issue of enforceability of the duty of consular offices to provide consular protection has not yet been elaborated.



Slovenia

According to the national Report, there is no special complaint procedure in a case of refusal of consular assistance. However, since Slovenian legislation (Foreign Affairs Act) states that Slovenia ensures protection, it remains unclear whether in the case of refusal, an injured party could bring the case before domestic courts alleging the breach of a State's obligation under its national legislation.



Spain

The national Rapporteur mentions that, given that consular offices are considered organs of the Spanish administration abroad, and that their activity is subject to Law 30/1992 of November 26, on the legal regime for public administrations and the common administrative procedure, the right of appeal provided for by the abovementioned Law should also be available against acts pertaining to consular protection and assistance. Similarly, it should be possible to challenge consular decisions before the administrative courts pursuant to Law 29/1998, which establishes the administrative jurisdiction.



The Netherlands

According to the national Report, individuals can sue the government for failure to provide assistance, but such cases have not (yet) been successful, since the courts (and the government) interpret consular assistance and diplomatic protection as a discretionary power of the executive which is non-justiciable, except that individuals have a legitimate expectation to be treated similarly to other individuals and that they also must be heard. That means that a request for assistance must be taken seriously, but if the government considers that assistance is not appropriate or that it should offer a different kind of assistance than the kind requested, then that is considered to fall under the legitimate discretion of government. A complaint can also be lodged before the Ombudsman



UK

The national Rapporteur mentions that the provision of consular assistance operates under the doctrine of 'legitimate expectation'. According to the [decision of the House of Lords in *Council of Civil Service Unions and others v Minister for the Civil Service* \[1984\] 3 All ER 935](#), under the doctrine of legitimate expectation, the controlling factor in considering whether a particular exercise of prerogative power is susceptible to judicial review is not its source but its subject-matter and the suitability of the issues

that have to be determined. Thus, British courts do not normally have jurisdiction to judicially review the consular policies of the Foreign and Commonwealth Office if the subject-matter of those policies involve national security, foreign policy and foreign relations.

According to the national Reports, the following countries provide for judicial review of the refusal to provide consular and diplomatic protection or of the discriminatory provision of consular protection: **Bulgaria, Denmark, Germany, Estonia, Finland, Hungary, Ireland, Latvia, Lithuania, Poland, Portugal, Romania, Spain, Netherlands, UK.**

On the basis of information made available by the national correspondents, it can be observed that the judiciary and/or the executive of certain Member States have not had so far the occasion to deal with complaints against the refusal of consular officials to provide consular assistance/protection. For this reason, there is no well established and precise domestic complaining procedure (**Cyprus, the Czech Republic, Greece, Ireland, Malta, Luxembourg, Slovakia, Slovenia**).

According to the national Reports, certain EU countries (**Austria, Belgium, the Czech Republic**) do not provide any judicial remedy or any other type of complaining procedure. It should be noted that these EU countries do not recognize a right to consular protection under the domestic law and consequently, they argue that there is no legal obligation to confer a judicial remedy to their own or EU citizens. Nonetheless, in **Ireland, the Netherlands** and the **United Kingdom**, where, although consular protection is provided as a matter of policy and there is no statutory obligation to provide such kind of protection, judicial review of the refusal to provide such kind of protection may be sought by the person affected, after following the administrative procedure.

Certain national Reports (**Cyprus, France** and **Italy**) mention that only an administrative complaint, usually before the Ministry of Foreign Affairs is available. The national Report on **Cyprus** mentions that in addition to this administrative procedure, a complaint may be lodged also before the “Commissioner for Administration-Ombudsman”. However, the decisions of the Ombudsman are not legally binding. According to the Finnish Report, the citizens may appeal as stipulated under the Administrative Judicial Procedure Act. A complaint can be lodged also before the Ombudsman.

Among the national Reports mentioning that a judicial remedy is available, two categories of EU countries can be distinguished on the basis of the level of judicial control exercised by the national courts on the executive’s acts: (i) the national legislation provides the possibility to bring a claim before the national courts, however the judicial control is limited because the judiciary holds that the executive enjoys a large margin of appreciation in the field of consular and diplomatic protection (**Germany, Ireland, the Netherlands, and UK¹¹¹**); (ii) the national legislation provides the right of the citizens to bring a judicial claim against the refusal to act, illegality of the consular officials acts or for claiming the damage caused by the consular official’s act; the discretion left to the executive is limited (**Bulgaria, Hungary, Latvia, Lithuania, Portugal and Romania**). This latter category of EU countries also requires the exhaustion of an administrative complaint procedure as a pre-requisite for the introduction of a judicial complaint. Although **Estonia** has a system similar to the latter

¹¹¹ **Ireland, the Netherlands** and the **UK** require the exhaustion of an administrative complaint procedure before going to the courts.

category of Member States – both administrative and judicial mechanisms of challenging the refusal –, however, it has to be noticed that the decision by a consular officer to provide or to refuse to provide financial assistance without security or the decision by the Minister of Foreign Affairs to release a person from the refunding obligation or to reduce the sum to be refunded cannot be contested in a court. Similarly, in **Finland** also courts are not competent to review complaints concerning financial assistance under the Consular Services Act.

As a final remark it has to be observed that the consular protection/assistance exercised by the consular officials is governed by the general national administrative law and that their acts are administrative law acts, which in certain Member States are subject to a lower or lesser judicial control, depending on the specific national approach on the level of discretion enjoyed by the EU country in the field of consular assistance/protection

4.2. Assistance in cases of death - Identifying and repatriating remains

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 11: Assistance in cases of death

Usually, the Member States' diplomatic and consular missions do not inform directly the relatives of their nationals who deceased outside the Union. The practice is to inform the competent national authorities from the Member States which then inform the next-of-kin as soon as possible.

The national Report on **Finland** points out that there is no obligation for the consular and diplomatic authorities to inform the relatives of the deceased national.

The national authority competent to inform the relatives of the deceased is, in most of the cases, the Ministry of Foreign Affairs. A minority of the reports provided that the competent authority to inform the relatives of the deceased is the national police (**Denmark, Ireland and Lithuania**). Although, even in these cases, the MFA still has to be informed by the diplomatic and consular missions at the same time of informing the national police or it will be the MFA that will then inform the national police, after being contacted by the diplomatic or consular missions.

The diplomatic and consular missions of all the Member States are competent:

- to assist with the logistical issues that arise when one of their nationals dies abroad. Therefore, they can assist the relatives of the deceased, after having their consent, in obtaining a death certificate, a copy of any statement or autopsy report, in arranging for the body to be buried, cremated or repatriated to the home country, to put in touch the relatives with the local undertakers who can make the arrangements to have someone buried (or cremated) locally or assistance in regard to the inheritance procedure.

According to certain national Reports, several diplomatic and consular missions are competent to provide the following specific consular assistance:

- to register the death of their citizen at the competent national authorities from the Member State of origin (**France**) or at the competent consular or diplomatic post (**Germany, Latvia, Portugal, Romania, UK**);
- issue a death certificate for their nationals deceased abroad (**Belgium, Bulgaria**¹¹², the **Czech Republic**¹¹³, **Germany, Portugal**¹¹⁴, **Romania, UK**);
- issue a *laissez-passer* for a corpse to allow the body to be repatriated or a consular certificate to accompany an urn containing the ashes of the deceased (**Belgium, Estonia, Finland, Hungary, Italy, Lithuania, Netherlands**). The procedure for obtaining the *laissez-passer* for the corpse involves different acts/documents according to the domestic legislation of the Member States and whether the Member State is also a party to the 1973 Strasbourg Agreement on the Transfer of Corpses¹¹⁵. The Agreement provides for the simplification of formalities required for the international transfer of corpses, through a uniform mortuary *laissez-passer*. To this end, it sets out the maximum conditions that a Party can require for the dispatch, transit and admission of corpses on its territory.

According to certain national Reports (**Hungary, Romania**), the consular and diplomatic officials are competent to protect the interests of their citizens in inheritance proceedings and provide specific assistance to an un-accompanied minor having no legal capacity, such as: searching for the local authorities providing care, taking the necessary measures if an appointment of a legal guardian is needed. In addition, the **Romanian** Report provides that the consular and diplomatic missions contact the Romanian National Authority on Child Protection.

The costs of any legal formalities and of the burial, repatriation, funeral of the deceased national are borne by the deceased's relatives or insurance company (if any). However, in urgent or exceptional cases¹¹⁶, most of the Member States' consular and diplomatic missions can provide financial advances, with the exception of **Latvia**¹¹⁷, **Lithuania**¹¹⁸, **Malta, Spain**¹¹⁹ and **UK**.

If certain financial advances are made by the diplomatic and consular missions the relatives have the obligation to refund the amount advanced by their State. Certain Member States allow, in exceptional circumstances, the Minister of Foreign Affairs to

¹¹² **Bulgarian** diplomatic or consular missions can issue a death certificate only in very exceptional cases where the authorities of some host countries are unable to do that.

¹¹³ In [Section 2.5](#) of the **Czech** national Report, it is said that on the MFA website death among other situations is described as falling under the consular officials competence of issuing of documents attesting such situations.

¹¹⁴ Art. 50 of the Consular Regulation states that “*consular posts may issue certificates attesting facts or situations intended to protect and secure rights and legitimate interests of the applicant.*”

¹¹⁵ The Member States that are parties to the [1973 Strasbourg Agreement on the Transfer of Corpses](#) are the following: **Austria, Belgium, Cyprus, the Czech Republic, Cyprus, Estonia, Finland, France, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Slovakia, Slovenia, Sweden**. According to the **Slovenian** report, “*Since the entry into force for Slovenia of the 1973 Agreement on the Transfer of Corpses in 1998, Slovenia experienced a significant simplification in the processes of transfer of corpses in cases where States were parties to this treaty.*”

¹¹⁶ Usually by exceptional cases, the national Reports refer to cases of insufficient financial resources (eg. **France, Romania**), or hardship (**Ireland**).

¹¹⁷ According to the **Latvian** Report, funeral expenses will not be covered by consular authorities.

¹¹⁸ In the case of **Lithuania**, only the municipality can provide financial aid according to the location of nationals of Lithuania, however in most cases the financial burden falls on the shoulders of the next-of-kin.

¹¹⁹ According to the **Spanish** Report, financial aid can cover only burial or cremation, but not repatriation of the corpse.

release a person from the obligation to refund on a reasoned application (**Estonia, Romania**¹²⁰, **Sweden**), or if the relatives have borne the cost of the funeral and they present documents attesting their difficult financial situation, it will be the diplomatic and consular missions to refund totally or partially the relatives (**Italy**).

Certain national Reports give details on what is the exact procedure of repatriating the belongings of the deceased national, e.g., the **French** diplomatic or consular missions will ensure the repatriation of the deceased's belongings (jewels, cash and bank documents) by means of the diplomatic bag.

Almost all national Reports mention that there is no direct competence for the Member States' consular and diplomatic missions on identifying the remains of one of their nationals.

As clarified by the **Irish** report, *“The process of identification is not the responsibility of the mission; but a mission should be prepared to assist where the competent local authorities (hospitals, coroners or morgues) request such assistance as a matter of urgency for the purpose of contacting and liaising with their counterparts in Ireland over matters such as dental records and DNA sampling”*.

According to the **Swedish** report, the diplomatic or consular missions, when necessary, assist in the identification process; assistance is given by a special Identification Commission.

According to the national report, **UK** considers the identification and repatriation of remains in crisis situations one of the most important issues which poses highly complex and technical problems.

Certain Member States do not have specific domestic provisions on death and repatriation of body (**Czech Republic, Poland, The Netherlands**); in these cases, general international rules, and the developed national practice provides the necessary guidelines to proceed with cases of death and identification and repatriation of remains.

4.3. Assistance in cases of serious accident or serious illness

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 12: Assistance in cases of serious accident or serious illness

The national Reports mention that the consular and diplomatic officials will do everything in their powers to assist a national that is seriously ill or has been the victim of a serious accident. They are competent to:

- inform, usually directly¹²¹, the relatives of the individual that was involved in an accident or is hospitalised¹²² after having his/her consent and only if there is no

¹²⁰ According to the **Romanian** Report, the Ministry of Foreign Affairs can pay the expenditure for repatriation of Romanian citizens, deceased on the territory of the State of residence, and when their families do not have the financial means to pay the repatriation and there is no possibility to bury the persons in the State where the decease occurred.

¹²¹ Most of the national Reports provide that it is the consular or diplomatic missions that inform directly the relatives of the ill/injured national. However, there are also certain Reports, such as **Estonia**, mentioning that the consular and diplomatic mission will firstly inform the Ministry of Foreign Affairs

one else (friends, relatives, persons accompanying the injured, ill person) that can inform the relatives;

- visit the ill/victim in hospital;
- if an investigation of the place of accident is taking place, the consular and diplomatic officials can visit the place of investigation;
- provide a list of hospitals, or other medical units, lawyers, local translators, credit institutions that can provide the necessary services;
- in case of violation of fundamental rights the consular and diplomatic missions can contact the local authorities;
- assist in cases of need of transfer to the sending State, usually by helping the ill/injured individual to fulfil the necessary formalities for the transport. Some of the national Reports provide the exact situations and conditions when repatriation for medical reasons can take place (**Italy, Portugal**). However, not the same level of precision of information was followed by all national Reports due to the lack of national legislation regulating the field.

Certain national Reports go into more details by expressly mentioning that the consular officials can inquire whether the affected person is given proper medical care (**Hungary**) and make sure that the individuals actually receive adequate medical care (**Italy**).

The costs for services involving medical care, repatriation for medical reasons, and other services related to the illness/injury/accident are borne by the individuals or their relatives or the insurance company (if any). In case the ill/injured person has a medical insurance, the consular and diplomatic missions will usually not provide financial assistance. Certain national Reports have been very specific in this regard saying that if the individual is insured then not even in cases of emergency will the consular or diplomatic missions provide for financial assistance (**Spain**).

Financial advances are given in exceptional circumstances¹²³ and are usually subject to signing specific documents committing to reimburse them¹²⁴, and to previous approval by the Member States' Ministries of Foreign Affairs, in cases of financial advances given to other EU citizens. Full financial assistance for medical purposes is possible for certain EU citizens located abroad on the basis of pertinent conventions concluded by the Member State¹²⁵ with third countries.

Some of the national Reports¹²⁶ mention the European Health Insurance Card as a means of getting financial support in cases of illness or injury for the EU citizens. It is important to point out that the European Health Insurance Card does not directly concern the research undertaken under the CARE Project, since the present research focuses only on consular and diplomatic protection/assistance outside the EU.

which will then inform the relatives of the individual or the national police which will then inform the relatives (**Cyprus**).

¹²² In the case of **UK**, the consular and diplomatic officials have to contact the British nationals within twenty-four hours from being notified if the serious accident or serious illness is a result of a crime. There is also a recommended time limit for visiting the British national for all other cases of serious accident or serious illness, namely, forty-eight hours.

¹²³ By 'exceptional circumstances', it is meant difficult financial situations, hardship, or no possibilities to get material assistance from other sources proved with relevant documents.

¹²⁴ **Ireland** requires the individual who received a financial advance to pay in addition to the actual advance also a small statutory fee for provision of the service.

¹²⁵ **Italy** has concluded such Conventions.

¹²⁶ **Bulgaria, the Czech Republic and Latvia**.

Certain Member States do not give any financial assistance, i.e., **Bulgaria** – no financial assistance can be given, not even if emergency treatment is necessary¹²⁷.

The consular and diplomatic officials cannot do the following:

- provide any legal or medical advices in cases involving accidents or illnesses. They will provide however information on local legal and medical practitioners that can provide the aforementioned type of advice as well as helping them with police formalities and contacting the individual's insurance company (if any);
- exercise investigative powers in instances of death abroad; all investigations and enquiries into crimes committed abroad are the responsibility of the local police and judicial authorities;
- pay the medical expenditure;
- pay the transport back to the sending State¹²⁸;
- intervene before the insurance company in the name of their citizens in order to bring claims on their behalf;
- provide accommodation in the embassy or the consulate, or pay the cost of accommodation at hotels;
- fulfil the obligations or pay the debts of their citizens remained unpaid or unfulfilled due to the accident or the serious illness;
- provide for legal representation or pay the judicial cost for proceedings connected with the accident of the serious illness.

Certain national Reports expressly provide that the field of assistance in cases of serious illness is not subject to regulation of any legal act, and is governed by *ad-hoc* reactions and the past practice of consular officials (**Latvia, Poland, Slovakia**), or simply that there is no available information on this topic (**Netherlands**).

4.4. Assistance in case of arrest or detention

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 13: Assistance in case of arrest or detention

All national Reports show awareness of the right of the consular and diplomatic officials of their respective Member State to be informed by the receiving State when one of sending State's nationals has been arrested, and to inform the nationals of their

¹²⁷ If a **Bulgarian** national has health coverage in Bulgaria, but does not have an European health card, in this particular case, the diplomatic and consular mission can assist his relatives by urgently obtaining an European health card for him. However, the diplomatic and consular missions will not pay for the emergency treatment.

¹²⁸ However, most of the Member states, in exceptional circumstances, offer financial advances in this case, with the exception of those that do not give any financial assistance.

sending State of the right to ask the authorities of the receiving State to inform the consular or diplomatic missions of their arrest/detention¹²⁹.

The most common forms of assistance that consular and diplomatic mission are competent to provide are the following (all of them are performed only with the previous consent of the arrested/detained person):

- to inform the family/friends of the detainee that he/she has been arrested;
- to establish and maintain contact with family members;
- to maintain contact with the detainee/arrested (in this regard, the **Romanian** Report provides that the consular and diplomatic officials have an obligation to pay a visit to the Romanian citizens after every appearance of the arrested/detained Romanian citizen before the Court of the State of residence; the **UK** Report provides that the consular and diplomatic missions have the obligation to pay at least one visit after the individual is sentenced and then they will aim to visit at least once per a year, or more often if necessary);
- to provide a list of local lawyers, translators and non-governmental organisations that can provide the necessary services;
- monitoring the trial and the detention conditions in order to ensure that it does not fall below the minimum accepted international standards, that it complies with fundamental human rights law and that it is not inferior to the treatment accorded to the nationals of the State where he/she is arrested/detained¹³⁰;
- to help the relatives in arranging visits to the detainee/arrested person;
- to deliver mail if accepted by the local authorities and when the mail service is not functioning adequately. Messages can also be transmitted if the telephone services are not functioning;
- ensure that the arrested/detained understands her/his rights under local law and furnish them with information on the legal system of the country, how to apply for legal representation or for legal aid, the conditions for bail, etc.;
- facilitate the transfer of money if need be;

All of the Member States are parties to the [Strasbourg Convention on the Transfer of Sentenced persons of 21.3.1983](#)¹³¹, therefore, they will inform the detained/arrested

¹²⁹ The right of the consular and diplomatic officials to be informed of the arrest or detention of one of the citizens of the sending State by the authorities of the receiving State and the right of the individual to be informed of the possibility of being assisted by his/her national consular organs are set out in Art. 36 of the Vienna Convention on Consular Relations and restated by the ICJ in the *LaGrand* and *Avena* cases, see ICJ Report, respectively, 2001, p. 466 ff. and 2004, p. 12 ff.. The European Union has been very clear on its position with regard to Art. 36 of the Vienna Convention on consular relations and expressly recognised the nature of fundamental human right of the right to consular assistance in *Brief Amici Curiae, The European Union and the Members of the International Community in support of petitioner, Jose Ernesto Medellin v. State of Texas, on Writ of Certiorari to the Court of Criminal Appeals of Texas*, n. 06-984, 26 June 2007.

¹³⁰ The consular and diplomatic officials are not competent according to the rules of international law to ensure better treatment for the detained/arrested person than the inhabitants of the State of detention receive.

¹³¹ The Convention is primarily intended to facilitate the social rehabilitation of prisoners by giving foreigners convicted of a criminal offence the possibility of serving their sentences in their own countries. It is also rooted in humanitarian considerations, since difficulties in communication by reason of language barriers and the absence of contact with relatives may have detrimental effects on a person imprisoned in a foreign country. Transfer may be requested by either the State in which the sentence was imposed (sentencing State) or the State of which the sentenced person is a national (administering State). It is subject to the consent of those two States as well as that of the sentenced person. The Convention also lays down the procedure for enforcement of the sentence following the transfer. Whatever the procedure

person of the possibility to serve the sentence in the Member State of origin and not in the third States where the EU citizen has been sentenced as long as the third country is also a party to the Convention.

Certain Reports provide that the consular and diplomatic missions can provide in addition to the above mentioned consular services the following specific services:

- in countries with a hard detention regime, the diplomatic and consular missions can, when allowed by the local authorities, purchase food, clothes and other items of basic necessity. The cost is paid by the detainee or his/her family or friends (**Belgium, Cyprus, Spain**);
- inquiring whether it is possible to bail out the affected person (**Hungary**);
- attend court sessions when the arrested/detained person is one of the parties of the disputed case (**France, Romania, Netherlands**);
- assisting in obtaining legal representation (free if applicable and available) (the **Czech Republic, Ireland, Lithuania, Portugal**);
- intervening in cases of petitions for pardon or early release, either by informing the detained/arrested persons, investigating the possibility or assisting in transmitting the petition (**Czech Republic, Italy, Slovenia, UK**) or assist the person to apply for pardon and clemency pleas (the Czech Republic, **Finland, Italy, UK**¹³²);
- assisting, within possible, the detainee in transmitting requests or petitions to local authorities concerning medical treatment or humanitarian treatment while being detained (**Portugal**);
- ask courts and other State authorities for information on reasons for the arrest (**France, Poland**);
- the **Romanian** Report provides that the consular and diplomatic missions can represent the arrested/detained individual before the courts of the State of arrest/detention or shall take the necessary measures to ensure the adequate representation of Romanian citizens by requesting the adoption of temporary measures for the protection of rights and interests of Romanian citizens who are not present or due to other reasons they have not benefited of adequate representation before the Court. The representation by the consular officials or the temporary measures taken by them has to be in conformity with the law of the State of residence.

The choice of method of intervention is usually at the discretion of the consular and diplomatic official.

The Member States' diplomatic and consular missions are not competent to provide the following services:

- intervene as legal advisors or as translators during legal proceedings;
- choose or impose a lawyer to the detained/arrested person;
- initiate court proceedings or interfere with local judicial process on the citizen's behalf;

chosen by the administering State, a custodial sentence may not be converted into a fine, and any period of detention already served by the sentenced person must be taken into account by the administering State. The sentence in the administering State must not be longer or harsher than that imposed in the sentencing State.

¹³² The **UK** diplomatic and consular officials will support the pardon and clemency pleas of British nationals only on the basis that there are compelling or compassionate circumstances supporting such pleas.

- pay the legal costs/fees, fines, translation costs, lawyers’ fees etc.;
- deliver items/goods when forbidden by the local authorities;

Certain national Reports provide that consular assistance is not provided to holders of double nationality if the person is arrested in the State of his other citizenship (**Belgium, Lithuania**).

As a general rule, the consular and diplomatic missions do not provide financial aid for costs related to the arrest/detention. However, financial aid¹³³ is possible¹³⁴ in exceptional circumstances, which in most of the cases will have to be reimbursed by the detained/arrested person. Nonetheless, the national Report on **Portugal** provides that reimbursement will be made only if the person has the necessary economic means. A small hardship fund is reported to be made available in the future to help overseas **Irish** prisoners “who find themselves in particularly onerous or deprived circumstances owing to local prison conditions”. Financial aid is usually not given for legal representation. Exceptionally, financial aid for legal assistance or bail is possible, according to the national Reports, in **Portugal** and **Spain** (but only in specific and limited circumstances). Thus, the **Spanish** Report provides that, starting with 2009, Spanish citizens facing a death penalty will receive financial aid for legal representation. This service is available only to Spanish nationals.

The Spanish Parliament approved on 30 November 2006 a non-legislative proposal calling upon the Government to adopt the necessary policies and legislative measures to ensure proper and free legal assistance to Spanish citizens sentenced to death or accused of crimes involving the death penalty abroad. There are also Circular Order n. 3.252 on Spaniards arrested and imprisoned abroad, and the recent Order AEC/2292/2009, 3 August, establishing the legal bases of and announcing economic aid for the legal assistance of Spanish citizens who face death penalty for 2009.

4.5. Assistance to victims of violent crime

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 14: Assistance to victims of violent crime

The common services that the Member States’ consular and diplomatic missions can provide are the following:

- inform the next-of-kin of the victim of the violent crime;
- inform victims about local doctors and lawyers that can provide the necessary medical assistance and legal advice;
- inform victims about their rights under the local legislation (e.g., how the person can recover loss or damage);

¹³³ The **Spanish** Report provides that aid granted under this heading is the biggest amount in the budget chapter related to consular protection.
¹³⁴ **Bulgaria** does not provide any financial aid for cost related to the arrest/detention.

- provide information on non-governmental organisations that can be of help to victims, particularly by providing necessary psychological assistance;
- assistance with the repatriation procedure.

Certain national Reports expressly mention that their consular and diplomatic officials can give assistance to victims of human trafficking: **Latvia**¹³⁵ and **Romania**.

Probably, the reason that only the Latvian and the Romanian Reports expressly mention this type of consular assistance is due to the fact that being new Member States the topic is of actuality and had to be regulated recently. However, since more Member States are parties¹³⁶ to the [2005 Council of Europe Convention on Action against Trafficking in Human Beings](#)¹³⁷ or signatories¹³⁸ to this Convention, taking the necessary steps for making possible the entry into force of the Convention, the consular and diplomatic officials of all these Member States are competent to provide assistance to a victim of human trafficking, particularly if they are asked by the victims. Therefore, the fact that only the two aforementioned Reports mentioned expressly consular assistance for victims of human trafficking does not mean that the other Member States do not provide such assistance.

Certain national Reports provide that in addition to the above mentioned consular services the following services are also made available:

- assisting in liaison with local authorities, particularly the police (**Belgium**¹³⁹, **Estonia, Ireland, Malta, Slovenia**). The national Report on **Ireland** provides that the consular and diplomatic missions can help the victims of assault abroad with police formalities, including language difficulties and assistance in contacting the victim's insurance company.

As regards the services that consular and diplomatic officials are not competent to provide, these are those already presented under the foregoing Sections [4.2](#), [4.3](#) and [4.4](#).

Good practice examples can be found in:

- the **Irish** Report which mentions that there is a specific procedure that consular and diplomatic officials have to follow when being asked assistance by victims of rape/sexual assault. Accordingly, they have to respect the principle of confidentiality, contact immediately either a local counselling service, or, if that is not possible, an Irish counselling service;
- the **French** Report provides that in France the *National Institute for the assistance and mediation in favour of victims* (INAVEM) will provide assistance also to victims abroad. The Institute is equipped with a call centre

¹³⁵ The **Latvian** Report provides that most of the cases involving victims of violent crimes concern assistance to victims of human trafficking.

¹³⁶ **Austria, Belgium, Bulgaria, Cyprus, Denmark, France, Ireland, Italy, Latvia, Luxembourg, Malta, Poland, Portugal, Netherlands, Romania, Slovakia, Slovenia, Spain, Sweden, UK** are already parties to the 2005 Convention on Action against Trafficking in Human Beings.

¹³⁷ The Convention is a comprehensive treaty mainly focussed on the protection of victims of trafficking and the safeguard of their rights. It also aims at preventing trafficking as well as prosecuting traffickers. It applies to all forms of trafficking; whether national or transnational and whether or not it is related to organised crime. It applies whoever is the victim: women, men or children and whatever the form of exploitation: sexual exploitation, forced labour or services, etc. The Convention provides for the establishment of an independent monitoring mechanism guaranteeing parties' compliance with its provisions.

¹³⁸ **Estonia, Finland, Germany, Greece, Hungary, Lithuania** are signatories to the 2005 Convention on Action against Trafficking in Human Beings

¹³⁹ The **Belgian** Report is very specific on the topic of the consular and diplomatic officials assisting the victims of violent crimes in their relation with the local authorities by providing that they can accompany the victims of violent crime to local authorities.

reachable from abroad as well as from the national territory every day. The French Ministry of Foreign Affairs can direct the victims or the victims’ families towards the *National Federation for Collective Accidents (Fédération Nationale des Accidents Collectifs, FENVAC)*, capable of providing general assistance and help for the establishing of an *ad-hoc* association (which can, for example, act as a civil party in a judicial trial possibly carried out in France, or directly proceed to the negotiation of a compensation);

- the **UK** Report mentions that the Foreign and Commonwealth Office has a published leaflet entitled ‘*Victims of Crime Abroad*’. British nationals may find additional support at Victim Support, a non-governmental organisation. In case of victims of rape/sexual assault abroad, the UK Report mentions that the consular and diplomatic official will follow a procedure which is similar to the procedure mentioned by the Irish Report. Additionally, the UK Report provides that the consular official may ask the police authorities and the hospital that a female police officer do the interview or a female doctor examines the female victim of rape/sexual assault.

The victims or the relatives of the victims will have to bear the costs related to legal representation before the local authorities provided by lawyers, translations, hospitalisation and other services. However, in exceptional circumstances, the consular and diplomatic officials can provide financial advances which later on will have to be reimbursed by the beneficiary. The **Bulgarian** Report provides that there cannot be any compensation for citizens suffering harm abroad regardless of the nature of the harm.

Certain national Reports expressly provide that there is no specific domestic provision on assistance that can be given to victims of violent crimes¹⁴⁰. The consular officials will thus deal with this topic by making recourse to the national rules governing ‘emergency situations’ (**Cyprus, Poland**).

4.6. Relief and repatriation of distressed citizens

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 15: Relief and repatriation of distressed citizens

In general the EU Council [Guidelines on consular protection of EU citizens in third countries](#) (doc. (10109/2/06) serves as basis for assistance to EU citizens located in third countries in distress, even though a pragmatic and often case-by-case approach is followed.

Some of the Reports point out the benefits of cooperation between the Member States through the Countries’ Crisis Units which ensures prompt and adequate response to crisis situations (**Italy**).

The common services that the Member States’ consular and diplomatic missions can provide are the following:

¹⁴⁰ The **Spanish** Report provides that “no specific practice was referred in this area.”

- advice and practical assistance;
- contact the people and inform them of the behaviour to be adopted in such circumstances;
- notifying the next of kin;
- depending on the gravity of the case, contact local authorities in order to provide assistance to citizens if they have been involved;
- prompt measures are usually taken for the purpose of organizing evacuations in case of urgent necessity; the individuals in distress situations are evacuated only with their express consent, they cannot be forced to leave the country; in order to ensure a safe evacuation, close cooperation is maintained with the local authorities of the third State; citizens are required to follow the rules of good practice in case of emergencies, when the Member State has developed rules of good practice (**Austria**).

A good example as regards public information on the services that a Member State can provide in emergency situations is to be found in the national Report on **Poland**.

Accordingly, the Polish *Instructions on emergency situation* determines six basic areas of activities in the time of an emergency situation: (1) operational reactions, including collection of all available information, making contacts, visiting places of crisis situation, rendering assistance, organizing evacuation; (2) contacts with the MFA: sending information, consulting, acquiring consent for extraordinary expenses; (3) contacts with family members of the persons in the distress; (4) contacts with the media; (5) information for the public (6) cooperation with consular posts of other EU members.

As regards the **Crisis Management Units** created by the Member States with the purpose of assessing the crisis and coordinate any relief and/or repatriation of distressed citizens, there are two categories of Member States:

(1) those Member States with a permanent Crisis Centre: **France, Ireland, Italy, UK**¹⁴¹. In all cases, there is permanent Crisis Unit that is ready to provide the necessary consular assistance in cases of distress. According to the national Reports, the Member States have discretion on deciding when to involve the Unit. Thus, the **Irish** Report provides that 'a significant number' of Irish nationals have to be affected in order to activate the Crisis Centre; the Report for **UK** mentions that the level of response is dependent upon the circumstances of the particular crisis. The **French, Irish** and the **UK** Reports mention that in addition to the Crisis Management Unit, the Ministries of Foreign Affairs created also an emergency consular team, ready to travel to the scene of emergency. Moreover, the **UK** Report mentions that since 2008, other crisis initiatives include Emergency Response Teams (ERTs) and Regional Resilience Networks (RRNs).

(2) Member States that create a Crisis Management Unit for specific distressed situations, if needed. After the evacuation or rescuing of the citizens, the Crisis Unit will no longer remain in place. A different Crisis Unit will be put in place for a future distressed situation. The conditions for creating a Crisis Management Unit and the actual adoption of the decision creating this Unit is at the Member States' discretion. For example, the **Belgian** Report provides that according to internal regulation there has to be more than 7 Belgians confronted with a disaster for a Crisis Centre to be set up. In addition to these units, the Ministries of Foreign Affairs may decide to create also an emergency crisis team to provide consular assistance right in the place in distress. The

¹⁴¹ The **UK** has a Consular Crisis Centre that is equipped with 67 workstations, including Firecrest and broadband networks, video and telephone conferencing facilities, television screens and access to key press agency feeds. This facility has the capacity to respond to two crises at the same time.

main task of this team is similar with the ones of the Member States having permanent emergency crisis teams, namely, to help with the evacuation of the distressed citizens.

In both cases, once the Crisis Management Unit is set up, they function 24/24 hours basis and their main task is to keep in contact with the victims and their relatives and provide advice to the aforementioned individuals. The means of communications are in general, the telephone and email. The **Belgian** Report provides that the Crisis Centre communicates also *via* a specific online website created specifically for consular assistance¹⁴². A similar service is made available by the **Czech Republic**¹⁴³, which, however, does not provide non-stop Internet communication channel for Czech nationals in distress. To be noticed that almost all of the Ministries of Foreign Affairs of the Member States have an emergency telephone line where the citizens in distress can call, with the exception of the **Czech Republic**¹⁴⁴

The national Report for **Denmark** points out that a specific collaboration exists between the Member States' Crisis Management Units. A relevant example is the joint Crisis Management Units (**Denmark, Finland and Sweden**).

All the national Reports have emphasised the importance of close cooperation between the Member States in cases of identification and repatriations of victims of distress situations arisen outside the Union.

Two specific consular services provided by the Member States can be taken also as an example of good practice:

(i) **France** has developed three different types of repatriations:

- carried out by the beneficiaries themselves when they can afford it;
- ‘*consular repatriations*’ - when the beneficiaries cannot carry out by themselves the repatriation, then the French consulates organise and funded it from the State’s fund (particularly in case of poverty);
- ‘*emergency repatriations*’ which are organised by the diplomatic and consular authorities in case of serious emergency and/or following dramatic events like terrorist attacks, military conflicts, natural catastrophes or pandemics (with restrictions imposed by the risk of contamination, thus leading the French authorities to prioritise the emergency care on site).

In all cases, French nationals repatriated in these three different ways benefit from the assistance of the CEFR (Committee of mutual help for repatriated French nationals, *Comité d'entraide aux Français rapatriés*). The CEFR is legally defined as a private association (according to the 1901 French law) but is funded and controlled by the Foreign Affairs Ministry and the Social Welfare Ministry. It carries out the reception of the repatriated nationals and the reception of the distressed people and their housing supporting them until their reintegration.

(ii) According to the **Irish Report**, the Ministry of Foreign Affairs has in place an ‘emergency plan’ which will be activated in the event that a major emergency occurs abroad affecting a significant number of Irish nationals. They also created the department of ‘Emergency Consular Assistance Team’ which will be ready to travel to

¹⁴² The **Belgian** crisis management unit is in contact with the relevant national and EU authorities (*via* Coolwebsite = consular online website)

¹⁴³ The **Czech** Ministry of Foreign Affairs launched in 2009 a new Internet application, where Czech nationals travelling and living abroad can submit information about their residence abroad.

¹⁴⁴ According to the **Czech** Report, the project to establish central phone number paid by the Ministry as receiver of calls was abandoned for technical and financial reasons. Nevertheless, the Ministry of Foreign Affairs has a non-stop center where calls from abroad to the Ministry are directed in evening, nights, weekends and public holidays.

the scene of the emergency to provide assistance, in addition to that of the local mission, to Irish nationals who have been affected. In addition to the usual cases of distress (natural disasters, terrorist acts, pandemics or military conflicts), Ireland expressly regulates also cases of financial distress. In these cases, the diplomatic or consular officials may advise on arrangement for a relative or friend to transfer money from Ireland through well-known commercial agencies (and make contact in Ireland for such purposes if wanted). If a commercial channel is not available, a consular official may contact relatives or friends in Ireland and ask them to send funds through the Department of Foreign Affairs. A small statutory fee applies in the latter case.

In general, costs have to be covered by the distressed individuals. Financial advances are possible in cases of repatriations of distressed citizens since they are considered as falling under '*the exceptional cases*' situation. The financial advance will have to be reimbursed. There are also exceptions when the financial advance put forward by the Member States for carrying out an evacuation¹⁴⁵ does not have to be reimbursed, the expenses being borne by the State (**Greece**¹⁴⁶, **Portugal**, **Romania**¹⁴⁷, **Spain**). On the other hand, there is also a national Report expressly mentioning that the individuals who made use of the possibility to receive financial advances will have to pay in addition to the amount to be refunded also a small statutory fee (**Ireland**). According to certain of the national Reports, **Lithuania** and **Spain** do not give direct general financial aid in cases of repatriation of distressed individuals, only plane tickets are provided.

As regards the issue of whether the national authorities bear responsibility for the damages arisen in cases of evacuations, only the **Spanish** Report expressly provides that 'there is also no public liability of the Spanish Government in evacuations where damages arise.'

The national Reports provide that consular and diplomatic protection and assistance will usually not extended to EU citizens' family members that are not EU citizens. However, the Member States seem to be more flexible in cases of distress in third countries. There are a few national Reports expressly mentioning that consular protection is given in cases of evacuation of distressed citizens – which is considered an exceptional circumstance- also to the family members¹⁴⁸, irrespective of the latter's' nationality (**Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovenia, Netherlands, UK**). However, the fact that some of the national Reports do not expressly mention that their Member State have developed a constant approach of giving consular protection also to the family members' of the EU citizens, irrespective of their nationality should not be equated with a lack of consular protection for the family members in cases of collective evacuations, rather that these Member States have a case-by-case approach. In these circumstances, usually, non-EU family

¹⁴⁵ Usually, the expenses are borne by the State only for collective evacuations.

¹⁴⁶ According to the **Greek** Report, reimbursement was not asked from the Greeks and other EU citizens evacuated from Phuket on 27 December 2004.

¹⁴⁷ **Romania** does not have a constant, coherent approach towards the entity that should bear the costs of collective evacuations. There has been a publicly advertised case of collective evacuation, when the costs were borne jointly by the Ministries of Transport and Foreign Affairs (the evacuation carried out in the Gaza Strip in 2007).

¹⁴⁸ As regards the definition of a family member, there is no coherent and strict criteria for establishing who is a family member for the purpose of granting consular protection. The **Spanish** Report provides an eloquent example of the discretion taken by the Member States over the personal scope of the consular assistance: '*Yet the seriousness of situations in which evacuations take place makes that no strict criteria concerning the concept of "family" are applied. They are rather generously interpreted.*'

members benefit of speedy procedures of obtaining the necessary visa to enter the territory of these Member States (**Greece, Hungary, Ireland, Romania**).

Certain national Reports expressly mention that there is no specific legislation governing consular assistance in cases of natural disasters, terrorist acts, pandemics or military conflicts. The assistance is therefore provided on the basis of internal national instructions and on a case-by-case decision (**Belgium, Bulgaria¹⁴⁹, Poland**).

All the national Reports mention that EU Member States agree the initiatives for the implementation of the consular Lead State concept, however, not all of them have had the opportunity and the financial capacity and human resources to assume the role of Lead State¹⁵⁰.

A special case of repatriation, which is not limited to distress situations, is mentioned by the **Latvian** Rapporteur: the basis for this policy is set in the Repatriation Law and in the Regulation on financial assistance for those repatriating. The Law was adopted primarily to deal with the consequences of the Soviet occupation when many Latvians and Livs¹⁵¹ were either deported or took refuge in different countries in the West. If there is an international agreement concluded on repatriation it will have priority in application. According to paragraph 4 of Article 9 of the Repatriation Law the relevant documents should be submitted to a Latvian mission abroad. The documents are legalized accordingly. Latvian missions, on basis of Article 18 of the Repatriation law, issue visa in case if the person has qualified for such a status.

4.6.1. Natural disasters

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 16: Natural disasters

The common consular services provided by the Member States’ consular and diplomatic missions include:

- listing and contacting the EU citizens in distress; the national Report on **Lithuania** provides that the consular officials have an obligation, where possible, to keep a regular contact with their citizens, when the latter are located in countries confronted with natural disasters. This obligation can be seen as a specific application of a more general obligation of the consular officials to provide consular protection to its citizens, when the latter have a corollary right to receive consular protection from their Member State.

¹⁴⁹ The **Bulgarian** Report provides that there are no criteria for distinguishing the cases whose urgency or gravity merit assistance and which do not.

¹⁵⁰ A few examples of Member States that have already assumed the Lead State role: **Belgium** is a Lead State for the Democratic Republic of the Congo; **Denmark** is – jointly with **Austria** – a consular Lead State for Bhutan; the **Netherlands** are the EU Lead State in Suriname, but this is currently limited to (pre-emergency responses; **France** is a lead State in Lebanon and Chad; **Germany** has taken the Lead State role for Kirgizstan; **Italy** participated as Lead State in the European Union Monitoring Mission in Georgia.

¹⁵¹ Livs are a historic indigenous group of Finno-Ugric descent living near the Baltic Sea.

- informing and keeping contact with their family members;
- maintain contact with the Ministry of Foreign Affairs in order to receive instructions and support in the region of the disaster;
- visit the place, if needed;
- support the victims (including organizing evacuations).

Specific consular services or departments created by the Member States in order to respond better to consular assistance/protection demands:

- **Belgium** - in cases of natural disasters can send a 'flying consular assistance' team to the region in distress having as a task to assist its nationals and other EU citizens during search, rescue and evacuation activities.
- **Ireland** - has set up a 'fully equipped Crisis Centre' which can be immediately activated in the event of a major emergency affecting a significant number of Irish national abroad, including arrangements for special free phone numbers, together with regular up-dates on the situation through the Department of Foreign Affairs' website. Thus, arrangements are in place in the case of an emergency to ensure that there is sufficient capacity to handle relatives' queries and to give them reliable and accurate information. The Department of Foreign Affairs also has in place an 'Emergency Consular Assistance Team' which will be ready to travel to the scene of the emergency to provide assistance, in addition to that of the local mission, to Irish nationals who have been affected.

In the following paragraphs the information provided by the EU countries on how they managed to deal with some of the most challenging natural crisis, as acknowledged by the Member States themselves¹⁵², will be put forward.

Tsunami – December 2004

The Member States were involved either by sending consular or diplomatic officials to the place in distress (**Belgium, Hungary, Italy**); others only by keeping contact with their citizens (**Estonia**¹⁵³); others by keeping contact with the citizens through a Crisis Management Team (**Italy**) and participating in repatriation proceedings (**Greece**¹⁵⁴, **France**¹⁵⁵).

The evacuation of **Czech** tourists including those wounded was organized mostly by travel agencies, several special flights were organized.

Reimbursement of the costs undertaken with the repatriation proceedings were borne by the Member States.

The disappointment of the **Swedish** citizens and press with the Swedish Ministry of Foreign Affairs reply to the financial aid requests after the tsunami disaster in Asia in 2004 led to a completely different organization of the Swedish Ministry of Foreign Affairs, where a rapid deployment force for crises situations has been set up. Consequently, the Swedish diplomatic or consular mission in the country concerned

¹⁵² According to the **Czech** Report, the December 2004 tsunami wave in southeast Asia and the Haiti earthquake of January 2010 were probably the greatest challenges for the Czech consular service.

¹⁵³ **Estonia** was in contact with its citizens, who were also informed that they could contact the consular authorities of other Member States. In the end, Estonian citizens were evacuated by the flights organised by other Member States.

¹⁵⁴ Evacuation was organized by **Greek** means of transport. A Greek civil aircraft was the first EU aircraft which landed in Phuket on 27 December 2004 at 17.00 local time. About 200 Greek citizens and 6 EU citizens were evacuated.

¹⁵⁵ The **French** diplomatic and consular authorities organised 'emergency repatriations'.

can now be supported also by a specific support force. The support force is a cooperation between the Swedish Rescue Services Agency, the Swedish Police Service and the National Board of Health and Welfare, the Swedish Red Cross, Save the Children and the Swedish Church.

Furthermore a new Law on Consular Disaster Response entered into force on 1 August 2010. The new law obliges the State to carry out consular disaster response by assisting individuals when many people connected to Sweden are affected by a crisis or disaster abroad and the evacuation and other measures cannot be met in another way. When taking a decision whether to carry out a disaster response or not, the nature of the crisis or disaster, its consequences and circumstances otherwise will be taken into account. The individual will be required to reimburse the State for costs incurred when transported or given health and medical care within a consular disaster response, i.e., for costs defrayed directly on his or her behalf and that should be covered by any travel insurance.

Haiti earthquake - January 2010

The Member States' involvement in the evacuation proceedings was directly related to the number of each States' citizens identified in Haiti. The Member States that identified a higher number of citizens in Haiti, created an emergency telephone line opened 24/7 for information on family and friends in Haiti. **Spain** contributed extensively to the evacuation proceedings since it was the only Member State having a diplomatic mission in Haiti at the moment of the earthquake. The **Czech** authorities were involved only by way of communicating with their citizens, who were mostly missionaries and volunteers of non-governmental organizations who were well aware of the economic and social conditions in Haiti. **Denmark** identified 11 citizens, since it had no embassy in Haiti, it sent a special unit from the Ministry of Foreign Affairs to Port-au-Prince with the aim of providing assistance on the place.

Some countries were positive that they did not have any of their own citizens on site in Haiti (**Hungary, Slovakia, Latvia, Lithuania, Luxembourg**¹⁵⁶, **Malta**), or that they at least did not require evacuation (**Slovenia**).

Several Member States sent additional consular personnel to Haiti in order to provide assistance, such as: special units from the Ministry of Foreign Affairs (**Denmark**) and 'flying consuls' (**Belgium**). Good practice examples are provided by:

- the **Italian** Ministry of Foreign Affairs which decided rapidly to dispatch in Haiti an Italian team – not only Crisis Unit's staff, but also personnel from the Ministry of Defence, the Department of Civil Protection, the International Red Cross, firemen, customs officers etc.. Subsequently, a Crisis Point was established directly in the Italian Honorary Consulate in Port-au-Prince. In order to manage the evacuation of dozens of Italian and EU citizens, the Crisis Unit contributed in daily teleconferences with EU Partners from Rome and participated in meetings in Bruxelles and, over all, trying to coordinate actions directly in Haiti. According to the information provided by the national Report, the Crisis Unit arranged the evacuation of lots of persons to Italy and Europe; several other people were helped to transfer to neighbour countries, such as the United States and the Dominican Republic. All these actions were possible due to EU Partners concrete cooperation. In particular, the Crisis Unit stated the great importance of the coordination realized by the EU Council (Spanish Presidency).

¹⁵⁶ According to the national Report, only **Luxembourgian** residents (not citizens) were in Haiti at that time.

- the **Swedish** Civil Contingencies Agency (MSB), whose task is to enhance and support societal capacities for preparedness for prevention of emergencies and crises, sent promptly IT and communication equipment and personnel to Haiti. MSB also sent about 20 people to Haiti to build a base camp for UN personnel. The base camp had Swedish/Danish management. **Sweden, Finland, Denmark, Norway and Estonia** also cooperated in the organization around the base camp. As chairman of International Humanitarian Partnership (IHP) Sweden also cooperated with other countries in organizing and securing transports to Haiti.
- the **Portuguese** Ministry of Foreign Affairs set up a consular Emergency Office and kept two telephone lines opened 24/7 for information on family and friends in Haiti (there were only 14 Portuguese citizens in Haiti at the time of the earthquake and only one suffered minor injuries).
- a significant assistance was given also by **Belgian** and **French** Government (for example, in rescue missions and first-aid interventions).
- rapid reaction to the devastating earthquake in Haiti was provided also by the **Dutch** government that sent a team of consular officers to the area within 48 hours.

Other Member States considered it to be sufficient to keep close-by consular personnel updated on the situation (**Estonia**). In one case (Estonia as well), it is explicitly mentioned that a person, having been working as a security official for the United Nations, ‘received assistance also from other channels’.

It was also mentioned that even if Member States did have nationals in Haiti at the time of crisis, instead of them being tourists who typically urgently need consular assistance in crisis situations, the persons present were “mostly missionaries and volunteers of non-government organizations” (**Czech Republic**) or “a couple of members of Religious orders that reside there” (**Malta**) and therefore more capable of self-help. Anyhow most of the EU citizens present in Haiti were tourists who were immediately and successfully evacuated due to the joint efforts of the Member States.

One country correspondent specifically mentions the identification and repatriation of corpses as a task of the consular team on site (**The Netherlands**).

One Member State took the Haiti crisis as a – tragic – opportunity to ask the public “to make use of the registration form on the website of the Ministry of Foreign Affairs in case of stays abroad” (**Slovakia**).

4.6.2. Terrorist acts

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 17: Terrorist acts

The common consular services provided by the Member States’ consular and diplomatic missions include:

- trying to locate the citizens residing in the area where the terrorist attack occurred as well as those who are travelling in the region;

- informing the citizens of the behaviour to be adopted in such circumstances;
- keeping contact with the competent local authorities and the EU missions;
- cooperating with other competent services in the evacuation procedures;
- keeping the relatives of the citizens informed.

As with natural disasters, a Crisis Centre can be set up and repatriation of the victims can be provided by the Member States if needed. See for example the terrorist outrage which occurred in Cairo in February 2009 when French victims were repatriated by regular and exceptional flights. According to the national Report, in **France** there is a *Fund of Guarantee for victims of terrorism and other offences* (FGTI) which is in charge of the compensation of the French victims or of their relatives. Consequently this Fund contacts the victims on the basis of the information received by the Consulate.

All available information is usually shared with the other EU Member States, e.g., the 2009 terrorist attack in Mumbai where joint search initiatives were taken by **Dutch** and **Belgian** consuls. The **Hungarian** honorary consul in Mumbai also provided assistance.

In cases of terrorist acts overseas, the **United Kingdom** has in place, and regularly reviews, Exceptional Assistance Measures for the victims and their families. The assistance provided, including financial assistance, is additional to normal consular assistance and will vary according to the particular circumstances of each situation ('Additional assistance' under Exceptional Assistance Measures may include the following: medical evacuation for injured individuals and evacuation for individuals in danger, which may be to a safe region of the country and not to the United Kingdom; paying immediate medical expenses; repatriating bodies or remains to the United Kingdom; paying expenses to return the luggage of those killed or injured; travel for two of the victim's family to the site of the attack; and accommodation and travel insurance). Assistance will only be provided as a last resort and only if the costs are not covered by existing insurance policies, employer schemes, the Government of the country involved or any other sources. Assistance will not be provided if individuals travel to a particular country against the advice of the Foreign and Commonwealth Office or if they did not take out travel insurance of their own.

Some of the national Reports mention that there have been no victims in any of the major terrorist attacks (Sharm el-Sheik 2005, 11 September 2001 Attacks on World Trade Center in New York) that have taken place in the recent past (**Cyprus, the Czech Republic, Estonia, Greece, Latvia, Lithuania, Luxembourg, Malta, Slovakia, Slovenia**).

However, there have been cases of kidnapping, usually by pirates, in the Somali or Nigerian coast. **Bulgaria** was confronted recently with the unfortunate event of one of its ships being held hostage by Somali pirates and another ship with about 20 Bulgarian sailors on boards was also taken hostage. After a long and unsuccessful negotiation of the Bulgarian authorities, the British ship-owner paid the ransom without any substantive engagement of the Bulgarian authorities, and the pirates released the crew.

On 3 August 2009 five **Lithuanian** crew members have been taken hostage from a cargo ship off the coast of Nigeria. The Crisis control group was settled down and the Government applied to the EU countries, USA and Nigeria for help in negotiations with pirates. Negotiations were successful and on 14 August 2009 all crew members were released. As regards the payment of the ransom to hostage-takers, some national Reports (**Bulgaria, Netherlands**) mention that "money is sometimes provided, but

always in the understanding that this is a loan and not a gift”¹⁵⁷. Therefore, it can be interpreted that also the payment of the ransom is a sort of a financial advance that has to be reimbursed by the beneficiaries. On the contrary, **Belgium**, has a policy not to pay for freeing hostages, not even in case of extreme urgency.

According to the **Austrian** Report, reimbursement of costs was not asked from Austrian citizens or citizens of other EU Member States, for assistance provided in 2005 terrorist attack in Sharm el-Sheik.

According to the national Reports, **Luxembourg, Poland, Portugal, Romania, Sweden** do not have any specific provision devoted to the hypothesis of terrorist acts. The field is governed by rules under the other sections and by a case-by-case approach.

4.6.3. Pandemics

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 18: Pandemics

The competences of the consular and diplomatic services under this section are similar with the ones under the section on [natural disasters](#). Most of the national Reports provide that there is no specific legislation governing this field, the same principles of assistance would apply as in the case of relief of distressed citizens located in third countries confronted with natural disasters. Usually, the Ministries of Health¹⁵⁸ will also be involved and if necessary also the Ministries of Defence.

The **Italian** Report provides that the Crisis Unit uses the most updated telemedicine instruments with possibility of remote diagnosis via a briefcase portable video, for use in the absence of any other possibility. The diplomatic-consular network provides assistance to the involved Italian citizens, in coordination with the local Authorities to ensure the equality of treatment and the adequacy of the provided care.

According to the national Reports, there are no publicly available information on pandemics in **Finland** and **Netherlands**.

As regards recent pandemics (swine flu, avian flu, TORS), according to the national Reports, no cases of consular assistance given to **Bulgarian, Latvian, Cypriot, Estonian, Lithuanian, Luxembourgian** citizens were registered.

¹⁵⁷ See the **Dutch** Report; the same goes for the Report on **Bulgaria**, although the public authorities did not manage to reach agreement with the pirates nor did they pay the ransom.

¹⁵⁸ As regards **Sweden**, the Swedish Institute for Infectious Disease Control, a more specialised public authority than the Ministry of Health, is the reporting authority.

4.6.4. Military conflicts

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 19: Military conflicts

In the case of armed conflicts, voluntary repatriations or evacuations from the conflict zone are usually the most required consular services that all the Member States provide. The repatriations are undertaken by the Ministries of Foreign Affairs, through a Crisis Management Unit, and collaborating with other EU partner Crisis Management Units which might offer transportation means.

In these cases, the Ministries of Foreign Affairs habitually issue warnings to their citizens to abstain from travelling to the respective countries. The Crisis Units or other Departments from the Ministry of Foreign Affairs are monitoring the political crises periodically affecting the various areas in the world.

The **Hungarian** Report provides that there are three types of country situations according to the level of danger present in the country [(i) not recommended, (ii) recommended for visit, (iii) raising security concerns]. The process of categorization occurs at a national level and by consultation with Member States of the EU and the Council of the EU.

According to the **Italian** Report, in cases of particular unstable situations with incidents and violence able to jeopardize the Italian citizens' safety and in cases of genuine military conflicts, the Italian Crisis Unit proceeds to prompt evacuation of the involved persons.

All the national Reports mentioning the respective Member State involvement in specific evacuation proceedings also mention that the family members of the EU citizens were offered assistance irrespective of their nationality.

In extreme cases of military conflicts, the Member States' consular and diplomatic missions are competent to do the following:

- contact the respective State authorities in order to find out what is the exact situation;
- ensure that the citizens' rights are respected and make steps in this regard;
- help the citizens to contact their family or the respective national authorities, if asked for;
- provide special help and take steps in cases of *force majeure*;
- assist and support in cases of kidnappings, disappearances or death of close relatives.

No reimbursement of the costs was asked from any of the Member States to its citizens or other EU citizens that were evacuated from the conflict areas. Non-EU citizens that were family members to EU citizens were also evacuated together with the EU citizens.

In the following paragraphs a few information will be provided on how the Member States managed to deal with two of the most recent crisis.

Lebanon conflict - July/August 2006

During the Lebanon conflict of summer 2006, **Cyprus** took a leading role as a reception point and undertook voluntarily the repatriation of many EU nationals. The Crisis

Management Unit of the MFA was supported by a broad range of other Governmental Ministries or Institutions such as the Police, the Army, the Ministry of Health and the Civil Defence and was successful in offering assistance to almost 60000 EU and third country nationals who arrived in Cyprus. The Republic of Cyprus covered all relevant expenses, thus not engaging in pooling of resources and burden-sharing arrangements.

Repatriation of **Czech** citizens was done with the help of the **Italian** missions.

Sweden evacuated over 8400 people, Swedish citizens and others, from Lebanon during the crises. The Ministry for Foreign Affairs chartered 53 airplanes, three ships and about fifteen busses. Compared to the other Member States, Sweden had one of the highest capacities to evacuate people due to the chartered ships. Since Swedish personnel were among the first to arrive to the scene they became responsible for co-ordinating the receiving of Union citizens.

Due to efficient sharing of transport resources (land transport, ship and military aircraft) between EU Member States, **Austria** has evacuated 328 Austrians and 143 citizens of other EU Member States.

Greece evacuated 439 Greeks and 2217 non-Greek citizens, including EU citizens, with Greek means of transport.

Denmark offered the vacant places it had in a ferry doing the route from Beirut to Cyprus to citizens of the other Nordic countries as well as EU citizens.

The aforementioned examples of successful collaboration between the Member States in the evacuation proceedings, and the additional information present in certain national Reports, prove that the co-operation between EU Member States has worked exemplary and that it was the reason for an evacuation as safe as possible in the given circumstances.

Georgia conflict - August 2008

A special co-operation between **Austria** and **Germany** was established.

Partial repatriation of dozens of **Czech** nationals was agreed with **Poland** and realized with its military aircraft from nearby Armenia.

Estonia helped in evacuating 30 citizens of other Member States and third countries. In addition, **Poland** evacuated 7 Estonian citizens from Georgia to Warsaw and **Lithuania** evacuated 6 Estonian citizens from Georgia to Vilnius.

As a final remark, according to the national reports, there has been special cooperation among Member States in almost all recent military conflicts¹⁵⁹.

According to national report, **Luxembourg** has never been faced with consular assistance in military conflict situations.

¹⁵⁹ Another good example is represented by the Chad conflict in February 2008: **France** had an emergency repatriation procedure; a special co-operation between France and the other Member States was established: for example even Italian citizens were directly assisted by the diplomatic-consular network of other EU Countries.

4.6.5. Financial advances

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 20: Financial advances

According to the information provided by the national Report, usually the costs for assistance services necessary abroad are borne by the beneficiary or his/her relatives.

Financial advances can be given by the consular and diplomatic missions only in exceptional circumstances, usually in cases of extreme urgency, such as those presented in the foregoing sections¹⁶⁰ and the national concerned does not have any other way of solving his/her problem. This kind of financial aid is provided mostly for the purpose of helping citizens to return to their home country (repatriation). In this case, some of the Member States will give financial advances in cash, others will only buy travel tickets which will then be given to the citizen in need (**Hungary, Lithuania, Spain**).

There are cases when no financial advances are given, due to lack of funds allocated for this purpose. The **Bulgarian** Report provides that not even in cases of distress will the consular officials grant financial advances. However, even in this case, the missions may provide cash with the previous approval of the MFA in extremely exceptional cases. The Bulgarian Report mentions that there has been only one case of such a financial advance. The **Hungarian** Report provides that Hungary will give financial advances only for repatriation purposes if the delay of repatriation would cause serious grievances. The consular official obtains the travel ticket and gives it to the affected person. A consular loan is provided in cash only on an exceptional basis for unavoidable expenses during the travel. According to the Maltese Report, **Malta** does not give financial advances to its own citizens, it only helps to transfer funds from the relatives of the Maltese citizen. In a similar way, according to the national Report on the **Netherlands**, the Dutch Consulates interpret their role rather as a mediator and not as a provider of money.

The **Estonian** and the **Finnish** Reports provide that in certain circumstances, the consular officials have the power to refuse to provide financial advances (the situations provided by the national Reports are similar):

1. The applicant has, when applying for assistance, knowingly given incorrect information on his or her identity or other incorrect information affecting the decision, or has concealed a fact that might have affected the contents of the decision;
2. The applicant has earlier received financial assistance from the mission unjustifiably, by having knowingly given incorrect information on his or her identity or other incorrect information that has affected the decision, or has concealed facts that have affected the contents of the decision;
3. The applicant has used earlier financial assistance for purposes other than those for which the assistance has been granted; or
4. The applicant has not repaid earlier granted assistance.

¹⁶⁰ The exceptional cases when financial advances are given are those mentioned in Art. 5 of Decision 95/553/EC.

The **Finnish** and the **Spanish** Reports expressly mention that financial assistance is, however, always discretionary.

Depending on the persons that can benefit of a financial advance, there are two categories of financial advances that the Member States' consular and diplomatic missions can provide:

(1) Financial advances given to the Member States' own citizens. Financial advances are given to the own citizens in exceptional circumstance which are usually assimilated with the distress situations mentioned in the foregoing sections. According to the **Finnish** Report, the grant of financial advances falls under the 'discretionary' power of the State.

The general rule is that financial advances can be given to the own citizens of the Member States only if the citizen undertakes to repay the costs/financial advance in due course¹⁶¹. For this purpose, the Member States require the citizens to sign a written commitment of reimbursement, which in most of the Member States is also an executory title. If the financial advances are not paid/reimbursed, then the citizen can be brought before the national courts in order to fulfil his/her financial obligation. The national Report on **Belgium** mentions a specific, singular situation whereby if the Belgian beneficiary does not pay/reimburse, it will be the Belgian diplomatic or consular official that provided assistance and made sure that a written commitment is signed that will be held personally responsible for the non-fulfilment of the citizen's financial obligation. In addition to the foregoing requirements imposed on the individuals for the purpose of receiving the financial advance, **Portugal's** diplomatic official retain the citizen's passport as an additional guarantee that the reimbursement will be made.

(2) Financial advance given to other EU citizens. If the Member State gives financial advances to its own citizens then it will give financial advances also to the other EU citizens in the same situations as for its own citizens. In general, financial advances can be given to the EU citizens only with the previous consent of the Member State of origin, except in cases of extreme urgency, and a written commitment¹⁶² of the EU citizen that she/he or her/his Member State will reimburse the financial advance. According to the national Report, the **UK's** consular or diplomatic official retains the citizen's passport as an additional guarantee that the reimbursement will be made. Reimbursement is expected from the beneficiary or, if he/she is in financial impossibility to pay, from his/her Member State. The **Belgian Report** is very clear in pointing out that the Belgian authorities expect reimbursement directly from the competent authorities of the relevant Member State and not the EU citizen himself. Most of the national Reports provide that there is no standard practice for recovery of the financial advances put forward by the Member States to EU citizens (**Austria, Belgium, Bulgaria, Cyprus, Greece, Italy, Slovakia, Slovenia, Spain**). On the other hand, certain national Reports provide information on the Member States' efforts of developing a procedure for how to reimburse the financial advances given to the own citizens or to be paid for financial advances given to other EU citizens. For the former procedure, an example is provided by the national Report for **Latvia** which mentions

¹⁶¹The exact time limit for reimbursement is established by each of the Member States. There is no common practice, some of the Member States such as Ireland do not lay down an exact period. According to the **Irish** Report, reimbursement has to be made in 'due course'; on the other hand the **Estonian** Report provides the exact time limit of reimbursement, i.e., in a maximum of ninety days from the date of its receipt.

¹⁶² The written commitment has a different format depending on the specific legislation of Member State that agrees to provide the financial advance.

that a system of bill of exchange is expected to enter into force after 2013. As regards the latter procedure, the national Report for **Cyprus** mentions that before providing the financial advance to other EU citizens, the necessary amount of money will have to be deposited at the Accounts Department of the MFA in Nicosia.

According to the information provided by the national experts, the only common situation when all of the Member States do not request reimbursement of the provided financial advances is the following:

- evacuation for reason of military conflict, regardless of the nationality of the individuals victims of the military conflict. To be noticed that this is not a general policy developed and made public by the Member States in regard to all possible military conflicts, but rather it is a case-by-case approach. This conclusion can be reached by assessing the reaction of the Member States in the past military conflicts, and the lack of express legislative provisions governing this field [see more in section [4.6.4](#)].

In addition, some of the Member States do not request reimbursement in the following cases:

- for evacuations in cases of natural disasters (**Greece, Portugal**);
- for large scale accidents involving Cypriot travellers (**Cyprus**);
- repatriation of Greek nationals by ships having a Greek flag, whatever the reasons of the repatriation (**Greece**);
- in cases of child abduction, evacuation, cases relating to serious offences against Danish nationals abroad, imprisonment (**Denmark**);
- proved difficult financial situation (**Hungary, France**¹⁶³, **Portugal**);
- emergency repatriations (**France, Portugal**);
- on the basis of a reasoned application, the Ministry of Foreign Affairs may release a person from the obligation to refund (**Estonia**);

If some of the Member States require only reimbursement of the provided amount of financial advance, certain national Reports provide that there are Member States requesting a statutory fee to be paid in addition to the actual sum (**Ireland**) or a fix fee of 40 € in case the consular service consisted of transmission of funds (**Finland**).

¹⁶³ According to the **French** Report, a law proposal, presented to the Council of Ministers on 22 July 2009, aims at bringing this practice to an end by implementing the demand for the refund of emergency expenses engaged abroad by France when the beneficiaries have deliberately exposed themselves to common dangers (law proposal concerning the external action of the State). For further details see at the following web page: http://www.assemblee-nationale.fr/13/dossiers/action_exterieure.asp

4.7. Consular fees

AT	BE	BG	CY	CZ	DK	EE	FI	FR
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Hypertext index table 21: Consular fees

According to the information made available by the national Reports it seems that, in general, consular fees are imposed in order to compensate the so-called administrative efforts of the consular and diplomatic offices. The method of establishing the fees differs, i.e., hourly, a fix rate, outlay depending on the relevant national legislation.

The general rule is that the applicant for consular services has to pay the fees established according to the national legislation, regardless of whether he/she is or not a national of the providing EU country.

Certain national Reports explicitly mention that the charged consular fees vary greatly according to the type of assistance (**Greece, France, Ireland, Portugal, Romania and Slovenia**). Other national Reports limit to provide the consular fees for different specific consular services. For example, according to the relevant **Danish** regulation¹⁶⁴ the standard fee per working hour is 800 DKK, however aside this type of fee, the Danish Ministry of Foreign Affairs includes two other forms of payment: set fees and outlays. In **Austria** the variation of the consular fees depends not only on the fees established on the basis of national legislation, but if an Austrian citizens asks for consular protection from another EU country and the consular fee charged for this consular service by a foreign representation is higher than the cost for the same services provided by an Austrian diplomatic/consular official, then the Austrian Federal Minister for Foreign Affairs, in accordance with the Federal Minister of Finance can enact a regulation that the consular fee rates for such official acts made in the interest of a foreign State or its nationals, are aligned with that of the foreign State¹⁶⁵.

In order to get an idea of different fees to be paid by EU Member States' citizens, it can be mentioned that in **Portugal** the issue of an ETD costs 10 € and that of a temporary passport 120 €. The **Netherlands** charges fees ranging from 10 € to 248 €¹⁶⁶.

Only the national Report on **Poland** provides that consular assistance itself is not subject to any charges. Fees may be charged for specific activities that result in release of documents, such as for issue of passports, Pole's Cards, emergency travel documents, legalization (authentication) of documents. In a similar way, the national Report on **Malta** mentions that, in principle, there are no direct fees with regard to consular protection. However, administrative consular services¹⁶⁷ and the issuing of passports are subject to consular fees. According to the national Report, "Apart from fees established in [relevant] legislation on fees, the **Czech Republic** does not calculate costs of its own engagement as cost which shall be paid by Czech nationals in distress".

¹⁶⁴ See Executive Order No. 1228 of 10 December 2009.

¹⁶⁵ See Consular Fees Act of 1992, Section 8.

¹⁶⁶ It has to be pointed out the recent cases brought by the Commission or applicants against the Netherlands for discriminatory taxes charged for long-term residents visa – Case 92/07 *Commission of the European Communities v Kingdom of the Netherlands*; Case C-242/06 *Sahin* [2009].

¹⁶⁷ The concept of "administrative consular services" is not defined.

However, in certain exceptional circumstances, the EU countries exempt certain consular services from payment. According to the national Reports, in general, the consular services exempted from payment are those given by the consular/diplomatic officials to EU nationals in distress¹⁶⁸ or in other cases of public interests provided by the national law (**Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, France, Hungary**¹⁶⁹ and **Latvia**¹⁷⁰). It has to be pointed out that the situations falling under the public interests are not usually listed in national law, but established on a case-by-case basis. There are also exceptions, when the national Rapporteurs have provided a list, in certain cases it is an exhaustive list¹⁷¹, with the exact situations falling under the concept of public interests. This was possible due to the more detailed domestic legislation:

- **Austria** – in cases of humanitarian/public interest purposes the citizens do not have to pay the set consular fees; additionally, the Austrian Federal Minister of Finance can enact a regulation that certain consular fees are charged at a reduced rate or not at all for important reasons of trade or business in relation to certain countries.
- **Belgium** – waiver of fees is granted in cases of: proven insolvency according to Art. 3(1) of the [Law 30/1999](#), for acts and documents requested in view of public or administrative interest; for acts requested by official agents of foreign powers in their official capacity, for their personal use or for that of their retinue, subject to reciprocity; for acts and documents relating to social security, especially those on retirement allowance; for visas, valid for one or multiple trips, affixed to the passports of foreigners who are not nationals of a Member State of the European Union when it relates to a) the spouse/husband or children who have not reached the age of 21 years of a national of one of the said Member States; any other relative of the said national or the spouse/husband that is dependent on or lives with him/her in the home country. When circumstances so require, the King decides which other acts may be free.
- The **Czech Republic** - waiver of consular fees is granted for relatives of EU and the European Economic Area citizens, children, diplomats, expected foreign officers, pupils, students, accompanying and visiting teachers, researchers supported by the European Union. In addition, the Foreign Affairs Ministry is entitled to reduce visa fees while supporting development of political and cultural relations, or for humanitarian reasons.
- **Denmark** - no payment is demanded in minor matters¹⁷², child abduction, evacuation, cases relating to serious offences against Danish nationals abroad, certain circumstances of imprisonment.
- **Finland** – no fees are charged for consular protection given to arrested, prosecuted or detained abroad.

¹⁶⁸ The concept of “*distress*” in these circumstances is to be construed widely as encompassing also situations of social-financial distress and evacuations, and not only natural disasters.

¹⁶⁹ According to the national Report on **Hungary**, the consular fees are either exempted or reduced depending on the gravity of the circumstances.

¹⁷⁰ According to the national Report on **Latvia**, on the basis of the Cabinet of Ministers Regulations No. 1333 (OG No. 187, 27 November 2009), a person can be exempted from paying on the basis of human consideration. The decision is made by the Head of the Consular Department or person entrusted by him/her.

¹⁷¹ **Denmark** and **Finland** provide that it is an exhaustive list.

¹⁷² All routine information tasks that may be handled on the basis of material to hand and within a space of half an hour should, as a general rule, be regarded as minor matters (public service).

- **Lithuania** - examination of applications for the issue of visas to the family members of a citizen of the European Union or a citizen of a Member State of the European Free Trade Association, where such family members are nationals of third countries, as well as to the family members of citizens of the Republic of Lithuania; examination of applications for the issue of visas to aliens travelling to visit a seriously ill close relative or a family member, or to the funeral of a close relative or a family member, or twice a year to visit the grave of a close relative or a family member in the territory of the Republic of Lithuania, on production of the documents attesting to this effect.
- **Slovakia** does not mention exemption in general for consular fees in situations of distress, however, it does mention reduction of the fee for humanitarian reasons or on the ground of reciprocity.

An interesting case of use of collected extra consular fees for the purpose of helping national in distress is presented by the national Report on **Romania**:

On the basis of Art. 15 of Law No. 198/2008, the Ministry of Foreign Affairs can use all the amount of the collected extra fees in the following situations: a) to pay the transport of the Romanian citizens who are in difficult situations and without financial resources and of children without a legal tutor, including the payment of transport, accommodation and daily allowance expenditures for the persons accompanying them, when assisted repatriation is required; b) to pay the expenditure for repatriation of Romanian citizens, deceased on the territory of the State of residence, and when their families do not have the financial means to pay the repatriation and there is no possibility to bury the persons in the State where the decease occurred; c) to pay other expenditures that arise when consular and diplomatic officials fulfil their duties provided in the Statute on consular and diplomatic officials and in the Vienna Convention on consular relations¹⁷³. For the situations laid down at points a) and b), if the required sum is less than 500 €, then the amount of the supplementary fees can be used by the diplomatic or consular missions only with the previous consent of the director of that diplomatic or consular mission. For sums more than 500 € the previous consent of the Romanian Ministry of Foreign Affairs is needed.

As regards the waiver of fees, certain national Reports explicitly mention that the waiver is applied in the same way for the nationals of that EU country as for other EU citizens: **Belgium, Denmark**.

With regard to the consular fees applied by the EU countries, certain national Reports provide that, in principle, according to the national law, consular fees are the same for their own nationals as for other citizens of the European Union. (**Germany**¹⁷⁴, **Hungary, Ireland**¹⁷⁵, **Italy, Latvia**¹⁷⁶, **Lithuania, Romania, Slovenia, the Netherlands**).

¹⁷³ An example under this paragraph can be the following: to pay the visits made to **Romanian** citizens who are in penitentiary located outside the jurisdiction of the consular office (while respecting the limits provided by the Vienna Convention on consular relations).

¹⁷⁴ The Act on Fees for Public Services Abroad distinguishes between fees and expenses (*Gebühren und Auslagen*), while fees should cover the costs of administrative work, expenses are costs like telephone or postal costs etc. It might be interesting to note that in general expenses which are below 5 Euro and expenses of less than 10 Euro for telephone, fax or postal costs are not charged. Moreover, the fees and expenses are not charged if the person is in financial distress or these fees and expenses would cause hardship.

¹⁷⁵ On the other hand, the same national Report on **Ireland** mentions that section 3(3) of the Diplomatic and Consular (Provision of Services) Act does specify that the Minister may make regulations which “*may differentiate between different classes of persons [to whom the Act applies] and between different countries and places*”.

Other national Reports argue the existence of the same consular fees charged for consular services provided to own nationals as for the other EU citizens only in regards to the ETDs (**Belgium, Denmark, Finland**).

4.8. Reimbursement of the assisting State

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 22: Reimbursement of the assisting State

This sub-section of the national Reports aims at presenting the exact reimbursement procedures and the problems encountered by the Member States in this field.

As to the reimbursement procedures, several general rules result from the national Reports: 1) no financial advance can be given without the previous consent of the Member State of nationality; 2) the claim of reimbursement of the financial advances is based on a written commitment of the assisted EU citizen that she/he will return the sum; 3) usually no reimbursement is asked for financial assistance given to EU citizens in distress, sometimes reciprocity is also mentioned as a cause for non-reimbursement; and 4) reimbursement is not usually asked by the consular/diplomatic mission that has assisted the EU citizen, but by the Ministry of Foreign Affairs of the assisting Member State to which the former has usually transferred the written obligation of the assisted EU citizen.

As regards the entity that has the responsibility to reimburse, the practice, as highlighted by the national Rapporteurs, is different in the EU countries. Several national Reports mention that it is the competent authority of the Member State of nationality of the assisted EU citizen to reimburse directly the assisting Member State (**Estonia, Hungary, Ireland, Italy, Lithuania, Romania, Sweden**).

Other national Reports mention that reimbursement is accepted also from the assisted EU citizen, however, if he/she cannot reimburse, then it will be his/her State of nationality to reimburse the financial advance (**France and UK**).

The case of highest degree of flexibility as regards the entity to do the reimbursement and the one to which the reimbursement has to be made is, according to national Report, **Cyprus**. Accordingly, the entity to do the reimbursement can be the assisted EU citizen, his/her family, the Embassy of her/his State of nationality in Nicosia, or his/her Government. The entity to which the reimbursement is made can be the Minister of Foreign Affairs in Nicosia, or if there is an Embassy of Cyprus in the country of origin, his/her friends or government may deposit the necessary amount of money to the Cyprus Embassy. The reason for this flexibility is the fact that the financial advance given by Cyprus to an EU citizen does not come from Cyprus financial resources, but a previous deposit in the quantum of the requested amount of money has to be transferred to the above mentioned authorities. According to the national Report, **Slovakia** also

¹⁷⁶ According to the national Report on **Latvia**, there are no indications that fees would be different for EU citizens.

requires a deposit to be made before the financial advance is given if there is no firm commitment of reimbursement.

Payment is usually made on a pro-rata basis, as foreseen in point 12.9 of the 2006 Guidelines on Consular Cooperation and in the new guidelines on the Lead State-concept.

The national Report on **Estonia** mentions that the reimbursement obligation is recorded on a special document which is forwarded by the Ministry of Foreign Affairs to the competent authority of the relevant Member State.

The **Dutch** Foreign Ministry indicates that reimbursement of assistance provided to unrepresented EU citizens hardly occurs. In the cases where it does occur, the assisted citizen has to sign an official document promising to repay.

According to the **Romanian** Report, the Romanian Government, based on documents supporting the help provided, will request the government of the other Member State to pay reimbursement by means of a bank transfer to the Romanian Ministry of Foreign Affairs. In the case of assistance provided to Romanian nationals the same procedure is applied inversely.

It should be pointed out that, according to the information provided by the national Rapporteurs, some EU countries have established no particular reimbursement procedures for assisted EU citizens, usually, in these cases, the procedure will be the same as that applied to their own nationals (**Belgium, Bulgaria, Greece, Ireland, Luxembourg, Slovakia, Spain** and **UK**). The national Report on the **Czech Republic** states in addition that there is no particular procedure, more specific than that provided in Article 6(4) of Decision 95/553/EC. The reason why in **Bulgaria** there is no specific reimbursement procedure for assisted EU citizens is that there is no financial advances given to Bulgarian or other EU citizens. Therefore, Bulgaria cannot be in the position of assisting Member State, however, it can have the role of the Member State of nationality that has to reimburse another Member State that has assisted a Bulgarian citizen. According to the national Rapporteur, in this situation, the Bulgarian Ministry of Foreign Affairs has only the role of transferring the money from the relatives of the assisted Bulgarian.

Certain national Reports mention the cause for the lack of an established practice on the procedure of reimbursement, i.e., the fact that there has not yet been made a payment to an EU citizen (**Austria, Luxembourg, Malta**).

5. Emergency travel document (ETD)

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 23: Emergency travel documents

This Section of the national Reports analyses how the principles established in the Decision 96/409/CFSP are incorporated in the national legal orders and followed in practice. If certain EU countries have encountered particular difficulties in practice, they are also mentioned under this Section.

All of the EU countries have transposed the Decision 96/409/CFSP by way of acts of different legal force, ranging from legislative measures amending the existing relevant law to lower ranking implementing acts that were not made public.

Examples of good practice can be found in the **Austrian, Greek, Czech, Latvian, Luxembourg's, Portuguese, Slovenian** legislation, which implemented the CFSP Decision by way of precise and transparent legislative or executive national provisions.

Certain EU countries do not have an express national provision implementing the requirements of the Decision, however they follow it closely in practice: **Estonia, Finland**¹⁷⁷, **Ireland**¹⁷⁸, **Italy**¹⁷⁹, **Lithuania**¹⁸⁰, **Poland**¹⁸¹, **Romania**¹⁸², **Slovakia**,

¹⁷⁷ There is no specific national provision on issue of ETDs for EU citizeness, section 3b of the Act on Passports deals with ETDs issued to **Finnish** citizens.

¹⁷⁸ No legislative measure whatsoever was adopted in **Ireland** for the purpose of implementing the Decision 96/409/CFSP, nor was the Decision published as such. However, according to the national Report, notification was given by the Irish Government in 1999 that all necessary procedures required by the Irish legal system had been completed to enable the Decision to be applied in Ireland. Ireland declared that the Decision 96/409/CFSP has been given effect in the administrative practice.

¹⁷⁹ The Decision is argued to be directly applicable in the **Italian** legal order with no need of further transposition or implementation. Thus, according to the national Report, it seems that the issuing of ETDs by the Italian consular and diplomatic mission is done directly on the basis of the Decision, however it has to be pointed out that the Italian legal system is a dualist one and that the Decision is an international agreement, which according to Art. 2 requires the fulfilment of the necessary internal procedures for its internal application. The only form of implementing measures is an executive [internal circular](#) of the specific Department of the MFA which is not made public.

¹⁸⁰ According to Art. 5(1) of the *Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded*, **Lithuania** has formally acceded to the CFSP Decision, becoming thus a party to this international agreement. Consequently, on the basis of Art. 20(4) of the [Law Consular Statute of the Republic of Lithuania](#) EU citizens can be issued certificates of return in the cases and conditions specified by the Decision. However, it has to be noticed that there is no specific implementation of the Decision, and in the end, the EU citizens are not issued the ETD as such, but the Lithuanian certificate of return.

¹⁸¹ According to the national Report on **Poland**: *'No distinct legislative action was taken to implement the Decision 96/409/CSFP on the establishment of an emergency travel document. In practice ETDs are issued when there is need to do so because from the point of view of the Polish Ministry of Foreign Affairs the 1996 Decision is treated as an international agreement concluded in a simplified form and has a self-executing character.'* The Decision has also been published in the Polish Official Journal. However, according to the interpretation provided by the national Rapporteur it seems that the stance of the MFA is not in conformity with Art. 9 of the Polish Constitution as for the international agreements concluded

Spain, Sweden, Netherlands, UK¹⁸³. Among these EU countries, **Ireland** is a very interesting case, as the 2008 Passport Act regulating the issuing of 'emergency passport' and 'emergency travel certificate' stipulates that the foregoing acts can be issued only to Irish nationals, no mention whatsoever of the possibility to issue ETDs to other EU citizens. As regards **Latvia**, according to the national Report, it was planned that during 2009 further required amendments in legal regulations will be drafted in order to issue ETDs, besides those already existing in the Law on Personal IDs.

Most of the national Reports mentioning that there are no specific national provisions implementing the CFSP Decision explain this situation by arguing that the CFSP Decision, as an integral part of the EU law, is directly applicable in the national legal orders and the principle of primacy applies as such. At this level, it is important to point out that the EC [95/553] and CFSP Decisions are not part of the EU law or *acquis communautaire*¹⁸⁴, as they are not acts of the Union's Institutions, but they are acts of the Representatives of the Governments of the Member States, namely they are international agreements. Therefore, it has to be analysed under this section, whether the CFSP Decision, being an international agreement, is directly applicable in the national legal orders based on whether the national legal orders are or not monist legal systems. From all the aforementioned EU countries that did not adopt any particular implementing legislation, arguing that the ETDs are issued in practice directly on the basis of the CFSP Decision, only The **Netherlands** is a monist system, thus explaining to a certain extent the situation. However, the rest of the EU countries are dualist system which do not give directly applicability to international agreements, and require relevant implementing measures. As highlighted in [section 2.3.1](#), the principles of sincere cooperation and non-discrimination require the EU Member States to establish a coherent, precise and transparent legal framework regulating the field of issue of ETDs to EU citizens¹⁸⁵.

In general, the principles established under the Decision 96/409/CFSP are followed by the EU countries. For the issue of the ETDs, the uniform format is generally used. There are however certain exceptions as mentioned by the **German** Rapporteur. The German consular and diplomatic mission issue "*Reiseausweis als Passersatz*" (RAP=travel document) according to § 2 sec. 1 No. 11 Implementation Regulation to the Law on Passports (*Durchführungsverordnung zum Passgesetz*) as substitution for the passport. This is due to the fact that the German public authorities consider that the level of security of the German document against falsifications is much higher than that of the European ETD. The rights granted by this document are however equivalent to those which follow from the Emergency Travel Document. According to the national Report

without ratification, they require to be implemented in the national legal system, which has not yet been done.

¹⁸² According to Art. 3(1) of the Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the EU, **Romania** became a party to the Decision, being bound under international law to take the necessary implementing legislation for the purpose of giving effect internally to this international agreement (Romania is a dualist legal system in regard to this international agreement). However, so far, no national implementing provision has been adopted.

¹⁸³ According to the national Report on **UK**, emergency travel documents (ETDs) are not issued as a matter of legal right, but they may be issued as a matter of policy.

¹⁸⁴ In this regard see also, B. de Witte, *Chameleonic MSs: Differentiation by means of partial and parallel international agreements* in *The Many Faces of Differentiation in EU Law*, edited by B. de Witte, D. Hanf and E. Vos, Intersentia, 2001 and by the same author, *The emergence of an European system of public international law: The EU and its Member States as strange subjects* in *The Europeanisation of International Law*, edited by J. Wouters, A. Nollkaemper, E. de Wet, Cambridge University Press, 2008, p. 39-55.

¹⁸⁵ The theoretical discussion put forward above on the implementation of the EC Decision apply in the same way to the CFSP Decision. For more details see [Section 2.3.1](#)

on **Lithuania**, consular and diplomatic mission can issue certificates of return, however, in the national legislation there is no express mention of the ETD issued to EU citizens. All of the national Reports mention that the ETD is issued for a single journey to the applicant's Member State of origin, emphasising the exceptional character of this travel document.

As regards the exceptional situations when the ETDs can be issued, these are the following, according to Annex II of the Council Decision 96/409/CFSP: lost, stolen, destroyed or temporarily inaccessible travel documents. Most of the EU countries are transposing exactly this provision, thus issuing an ETD for an EU citizen in all of the above mentioned situations. Certain national Reports mention that their national implementing legislation provides a more limited area of situations than under the EU law framework. Thus, according to the **Bulgarian** Report, the cases where the ETDs can be issued for EU citizens are only for: lost or stolen travel documents, the cases of destroyed and temporarily inaccessible travel documents are not stipulated by the Bulgarian law. So far no problems have occurred in practice, however, this is mainly due to the fact that there have not yet been many applications for issuance of ETDs from other EU citizens than Bulgarians. The **Belgian** Report stresses the exceptional character of the ETD by mentioning that the Belgian diplomatic and consular missions when considering whether to give or not an ETD, will take into consideration the nearest consular/diplomatic mission of the EU home country.

All of the national Reports provide that the ETD is issued only if the consent of the State member of the European Union of which the applicant is a national has been previously given. In addition to this consent, some of the national Reports mention that also the previous consent of the MFA of the EU country's diplomatic or consular mission issuing the ETD is necessary (**Bulgaria, Finland**).

In the case of **Belgium**, there is no need of the previous approval of the Belgian MFA, however, the ETD is issued after previous consultation between the Belgian consular officers from the sought consular mission.

According to the national Reports, the categories of persons that can receive an ETD are usually the same as those that can receive consular protection. However, there are certain exceptions:

- **France** issues ETDs for: the refugees, stateless persons and beneficiaries of the subsidiary protection and for the members of their families; for the foreigners legally residing in France or who are granted a short-stay visa allowing them to enter in France; for minors who were adopted and benefit of a long-stay visa for adoption on request of the adopting parent.
- **Bulgaria** does not issue ETDs to refugees, stateless persons and beneficiaries of the subsidiary protection, however, the consular and diplomatic missions in Armenia, Azerbaijan, Georgia, Kazakhstan and Moldova issue ETDs for Montenegrin citizens that want to return in Montenegro based on a bilateral agreement concluded between the MFA of Bulgaria and Montenegro.
- **Estonia** issues a permit of return similar to the ETD to an alien (having permanent residence in Estonian and holding alien's passport) in exceptional cases and on the condition that the person can be identified in the foreign State.
- **Latvia** issues certificates of return to holders of Latvian passports.
- **Lithuania** will issue repatriation certificate also to stateless persons, refugees and persons benefiting of subsidiary protection.

According to the national Reports, all of the EU countries' consular and diplomatic missions are competent to issue ETDs, however, at the moment of writing the Reports, not all of the EU countries diplomatic and consular missions were in fact equipped with ETDs. This is mainly due to technical reasons. (**Greece, Romania**)

Almost all of the national Reports mention that the Honorary Consuls are not competent to issue ETDs. Certain of the national Reports (**Cyprus, Portugal**) provide that in exceptional circumstances, the honorary consuls may also receive applications for issue of ETDs (**Cyprus**)¹⁸⁶ or issue travel documents and other notary acts (**Portugal**)¹⁸⁷.

Generally, the national Reports mention that no serious problems occurred in the practice of issuing ETDs. However, certain national Reports report certain difficulties/problems:

- **Belgium** – According to the national Report, “practice has shown that it is often difficult for Belgian nationals to obtain an ETD from other EU-missions. It seems unclear whether all EU countries issue these documents. In one case a Belgian had been the object of a robbery in Namibia and an Embassy of an EU Member State refused to give him travel documents so that he was stuck in Namibia for a while”.
- **Estonia** - The national Report mentions that “a representation of one Member State refused once to issue an Emergency Travel Document to an Estonian citizen claiming that such assistance is provided only to its own citizens”.
- **Lithuania** – According to the national Report, the Ministry of Foreign Affairs of the Republic of Lithuania reported the following problem that requires attention. The citizens of the Republic of Lithuania address to the EU diplomatic missions mostly with requests to issue ETDs. However, very often the diplomatic missions of the EU Member States refuse to issue the documents and redirect the citizens of the Republic of Lithuania to diplomatic missions of other EU Member States or claim that they do not possess the necessary documentation.
- **Slovakia** – According to the national Report, the issue of ETDs is working in practice sufficiently well; however, some practice of having business by selling travel documents has been reported by the UK. That is why some diplomatic/consular missions are careful when providing ETDs.
- **Slovenia** - The national Report expressed concerns as to the fact that embassies of some Member States (e.g., Germany, France, United Kingdom, Belgium) instead of issuing ETDs insist on issuing their national return documents also for nationals of other Member States and regarding the fact that the prices of ETDs vary (from 10 -30 Euro) at embassies of different Member States.

¹⁸⁶ According to the national Report on **Cyprus**: “Honorary Consulates in need of issuing an ETD will contact the embassy under whose supervision they operate and ask for the document. The embassy will check the request of the honorary consulate and send the requested document. The emergency travel document will then be filled out and issued by the honorary consul.”

¹⁸⁷ According to the national Report on **Portugal** : “[...] in exceptional circumstances, the Minister of Foreign Affairs may authorize them to perform the consular functions related to processes of electoral registration, to civil registration and notary acts and the the issuance of travel documents (Article 25, n. 3, of the 2009 RC). Exceptional circumstances occur when the honorary consulate is located at a distance of more than 600km from the consular mission of which it depends or when it is located in islands or countries where there is no Portuguese consular representation; when it is foreseeable that the honorary consulate will perform more than 1000 consular acts per year; or when it is located in an area where more than 1000 Portuguese citizens reside (Article 25, n. 4, 2009 RC).”

Charges and fees are levied for issuing the ETDs as they would normally be levied for issuing an emergency passport. Certain of the national Reports mention that in certain exceptional circumstances, there is a possibility that the fee for issuing the ETDs is borne by the Member State of origin in accordance with the instructions given by the latter.

According to the national Reports, only Italy provides a fix period for the validity of the ETD, all the other countries established a flexible period of validity depending on distance to the return EU country, etc.

6. Exercise of consular functions for expats

AT	BE	BG	CY	CZ	DK	EE	FI	FR
DE	EL	HU	IE	IT	LV	LT	LU	MT
PL	PT	RO	SK	SI	ES	SE	NL	UK

Hypertext index table 24: Consular functions for expats

This section of the national Reports focuses on the consular functions that the consular and diplomatic missions of the EU country of nationality exercise for their nationals residents abroad. The Reports mention whether there are particularities in the specific consular services provided to the expats. For the purpose of the present research, the present section is of interest in order to have a clear picture of the consular services provided, of whether there are discrepancies among the consular functions exercised by the EU countries firstly among their own nationals and secondly whether they are capable to arise also between the expats and other EU citizens.

According to the information made available by the national Reports, several principles have been identified as applying to all EU countries.

Firstly, there is no obligation of registration at the consular or diplomatic missions in the State of residence for the expats of the EU countries, with only one exception – **Latvia**. According to the Latvian Law on Population Register, the Latvians living abroad have the obligation to register. An interesting case of registration is mentioned by the **German Rapporteur. Accordingly, the EU citizens, whose State of nationality has no consulate in the third State, have the right to be registered by German consular posts.** The registration has the purpose of facilitating effective aid in case of disasters or political unrest. The other national Reports mention that their States encourage the registration of their citizens at the consular or diplomatic missions on voluntary basis, therefore being in line with the Council Guidelines of 2006. According to the national Reports, **Estonia** and **Latvia** do not accept double citizenship.

The second principle is the non-differentiated consular services provided to short-term/temporarily residing citizens and to those permanently residing in a foreign country. The same functions are exercised by the consular and diplomatic officials, in particular, the following services:

- Issue /prolongation of passports;
- Issue of civil status documents;

- Notary certifications;
- Organisation of voting procedure. Almost all national Reports mention that their expats can vote for the same positions as the nationals do. However, the Bulgarian Report points out that all Bulgarian consular and diplomatic missions organise elections for national parliament and for Bulgarian representatives in the European Parliament, but not for local elections.
- Transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State.

A third principle refers to the importance of the consular service function for the Ministries of Foreign Affairs of the EU countries, particularly for those EU countries that have a high number of their nationals living abroad such as Austria, Belgium, Bulgaria, Italy, Spain. According to the **Bulgarian** Report, a special Agency for Bulgarians Abroad was established in 1993, but it has only communication, cultural and educational functions, while the consular services are provided by the respective missions. A cabinet minister in charge of the issues of the Bulgarians abroad was appointed in 2009, who engages himself mainly with the issues of naturalization of the Bulgarians from the traditional communities. The **Estonian** Report mentions that the Ministry of Foreign Affairs organises sometimes “temporary consular missions” in States without permanent Estonian diplomatic mission or consular post in order to provide consular services both to Estonian and local citizens (latest mission takes place from June to August in Kazakhstan).

According to the national Report on **Ireland**, one rather unique feature of Irish diplomatic and consular protection abroad stems from the liberty granted by the Irish nationality laws to those born abroad and being of Irish descent. Under the *jus sanguinis* rule, a person born abroad can acquire the Irish citizenship through ancestral blood ties. Thus for example a US citizen of Irish descent who has validly made a valid application for ‘foreign births registration’ to obtain Irish citizenship may avail of Irish consular assistance abroad despite his/her lack of other ties with Ireland.

There are also certain national Reports mentioning that their EU country does not have a particular policy on the consular functions exercised for expats (**the Netherlands**¹⁸⁸), or that no data exists in this regard (**Luxembourg, Slovenia**¹⁸⁹, **Malta**). The national Report on Luxembourg gives the reason for this lack of available data:

Luxembourg has no data on expats for two main reasons. Firstly, Luxembourgian citizens do not have to register themselves towards Luxembourgian embassies or services of the State they live in. Secondly, it is more complicated to have precise data since many Luxembourgian citizens possess or are eligible for double nationality.

As to the possibility to give consular advice and **voting by way of e-government and e-voting**, the **Austrian** Report mentions that consular functions for expats are exercised also electronically, by way of e-government, in accordance with international agreements, practice and the laws of the receiving State. In **Luxembourg**, participation to elections for Luxembourgian citizens living abroad is organized by mail. The **Romanian** Report mentions that in countries where there are large communities of

¹⁸⁸ According to the national Report on the **Netherlands**, no special policy with respect to expats exists due to the fact that there is no requirement to register at a Dutch Embassy for Dutch Expats.

¹⁸⁹ According to the **Slovenian** Report, Slovenian diplomatic and consular missions can not keep records of Slovenian expats.

Romanians, consular officials give consular assistance or advices also on the Internet¹⁹⁰. According to the national Report, Polish consular and diplomatic mission do not provide this type of consular services, however, it is planned to enable electronic enrolment on the list of people entitled to vote.

The **Italian** Rapporteur states that the Italian Government financially assists the Italians residing abroad through the financial contributions given to (also private) legal persons or associations representing or protecting those citizens: for example, in 2008 the Government has spent 1845417 Euro for these contributions. On the other hand, according to the national Report, the **Danish** citizens who are permanent residents of another country should seek financial assistance from the country of residence.

Among the problems encountered in this field most of the Reports refer to the consequence that the financial crisis has had on the consular functions of the diplomatic and consular missions. Many national Reports have mentioned that some of their consular missions have had to be shut down or the financial resources of the missions have had to be cut down. For example, the **Czech** Report mentions that, currently, there is remote access to public registers, available only in 39 consulates and embassies.

According to the national Report on Luxembourg, the Commission for European and Foreign Affairs of the **Luxembourgian** Chamber of Deputies recognizes that the own Luxembourgian consular and diplomatic network is rather thin.

Despite the sometimes significant reduction of consular personnel, all of the Reports assure that this will not affect the consular services or assistance given to their expats and citizens. However, the help of the EEAS is seen, mostly, as a welcomed step for maintaining a satisfactory consular service for the EU citizens.

7. Summary

According to a 2006 statistical Report requested by the European Commission, around 7 million EU citizens travel per year outside the EU to go to countries where their own Member State does not have any representation. Around 2 million EU expatriates live in a third country in which their own Member States is not represented.¹⁹¹ In addition, the 2004 and 2007 enlargements have brought an interesting phenomenon, on the one hand the number of the Member States represented in all third countries has decreased while the number of citizens in need of protection has increased.

The possibility of problems arising from the increased travels of the Union citizens outside the Union has been long identified, since before the entry into force of the Maastricht Treaty, when Pietro Adonino, the president of the *ad-hoc* Committee on “People’s Europe” wrote in an article from *Affari Esteri* of October 1985 that one of the topics that was considered by the Committee was “*i viaggi del cittadino al di fuori della Comunità*” [citizen’s travels outside the Community] which was seen as an important topic that had to be put before the next European Council. Therefore, the topic was dealt in more detail in the Report of the *ad hoc* Committee which was presented before the European Council in Milan on 28 and 29 June 1985, however, it is only with the adoption of the Maastricht Treaty that the Union citizens have acquired an individual right to

¹⁹⁰ This is currently the case for the consular and diplomatic missions in Italy, Spain, and certain embassies in the US.

¹⁹¹ The Gallup Organisation 2006, Consular Protection – analytical report and Eu initiative to strengthen consular protection for citizens outside the European Union, MEMO/07/551, Brussels, 5 December 2007- See also the Communication from the Commission on Justice, freedom and security in Europe since 2005: an evaluation of The Hague programme and action plan (doc. COM (2009) 263).

consular and diplomatic protection from any of the other Member States represented in the location outside the Union, where the Union citizen is located.

The Chapter on the EU law framework has established some important issues on the status of the right to consular and diplomatic protection now embodied in Arts. 20(2)(c) and 23 TFEU and Art. 46 of the EU Charter: (i) due to the new structure of Art. 20 TFEU as a list of rights for Union citizens, among which the right of the Union citizens to protection by the consular and diplomatic authorities of the Member States is to be found, the right is clearly an individual right of Union citizens¹⁹²; (ii) the content of the right embodied in Art. 20(2)(c) TFEU is consular and diplomatic protection conferred on a non discriminatory basis to the unrepresented Union citizens; (iii) the right is clear, precise and unconditional, which means that according to the *Van Gend en Loos* doctrine and the subsequent case law of the ECJ on direct effect of Treaty provisions, it can be invoked by the Union citizens before the national courts¹⁹³; (iv) the right as well as the future directives adopted by the Union in this field fall under the full jurisdiction of the Luxembourg Courts. Currently, the problem as regards judicial guarantees of the right to consular and diplomatic protection does not lay at Union level, but in the national legal orders as it was shown in [Section 4.1.2](#), where certain Member States confer only the possibility of administrative claims and others no form of complaint against the refusal of consular and diplomatic officials to provide consular and diplomatic protection. The situation is even more precarious if the refusal concerns the request for financial advances, where even more Member States provide no form of judicial review.

According to the information provided by the national Reports, the implementation of consular law in the EU countries works quite well, also for consular assistance to EU citizens. Only a few cases of difficulties in the practice of consular assistance given to EU citizens were mentioned by just a few EU countries¹⁹⁴. This view seems to be confirmed by the very small number of cases challenging the decisions of consuls and diplomatic officials.

However, according to the information made available by the national Reports, it seems that the EU countries have different approaches on several issues: the types of measures, if any, adopted for the implementation of Decisions 95/553/EC and 96/409/CFSP, whether consular protection is a right or not, the level of discretion left to the Member States in deciding when, to whom and to which level to afford consular protection, the

¹⁹² The right to receive international protection was an individual right of Union citizens even before the entry into force of the Lisbon Treaty, however, due to differences between the mechanism under the European law and that under international law as well as a less clear structure of former Art. 17 EC Treaty, certain academics contested the status of individual right of Union citizens. This opinion is no longer justified by the structure of the current Art. 20 TFEU.

¹⁹³ There is no provision in the wording of Art. 20(2)(c) or 23 TFEU which makes the existence of this right dependent on the discretion of the Member States. The provision in Art. 23(1) TFEU requiring the Member States “*to start the international negotiations required to secure this protection*” does not affect the existence of the right to consular and diplomatic protection but only the future exercise of the obligation of the Member States to secure the right of Union citizens.

¹⁹⁴ **Austria** has experienced problems when providing assistance to Union citizens, in particular, concerning support to family members and visa issues; **Slovakia** has experienced problems in providing assistance to Union citizens, in particular, concerning questions of visa and travel documents; according to the **Estonian** Report, “*a representation of one Member State refused once to issue an emergency travel document to an Estonian citizen claiming that such assistance is provided to its own citizens only*”; on the other hand, **UK** did not experience any problem on providing consular assistance to other EU citizens, however, it has to be pointed out here that the assistance itself is provided by the UK on the basis of administrative discretion.

legal force of the provision interpreted regarding the provision of a right to consular protection, the different levels of coherence of domestic legislation regulating the field of consular protection, the possibility of conferring financial assistance to citizens in distress.

Details on the discrepancies identified between the national legislation, case law and practice of the 27 EU countries are as follows:

1. The implementation of Art. 20(2)(c) TFEU and Decisions 95/553/EC and 96/409/CFSP.

Only a few Member States that have adopted national provisions for the implementation of former Art. 20 EC Treaty, because the Article was argued by almost all the Member States to be directly applicable in the national legal orders, and thus there was no need of further implementing norms. With regard to those Member States that have though adopted such norms, it seems that the majority of the national norms refer only to consular protection¹⁹⁵. This does not necessarily mean that these Member States understand Art. 20 EC Treaty as restricted only to consular protection, but rather that former Art. 20 EC Treaty was implemented together with the adoption of the measures implementing Decision 95/553/EC which is limited to consular protection. Sometimes former Art. 20 EC Treaty was implemented by the same measure that implemented the Decision which explains the limited understanding of former Art. 20 EC Treaty as a provision in regard to which, for the moment only measures implementing consular protection have been adopted, however, this does not exclude the possibility of future developments arising also for diplomatic protection.

Before analysing the national norms implementing Decisions 95/553/EC and 96/409/CFSP, it should be noted that these implementing measures adopted by the Member States under the former Art. 20 TEC limit to a large extent the content of the right to consular and diplomatic protection embodied in Art. 20(2)(c) TFEU, firstly because they do not clarify why diplomatic protection was not included in the subject matter of the Decisions although they take as their heading the exact wording of the former Art. 20 EC Treaty, now Art. 23 TFEU and secondly, by using a narrow concept of consular protection provided in the Treaties Articles.

Framed in this way, the Decisions may be seen as contrary to the fundamental right to consular and diplomatic protection of Union citizens embodied in EU primary law. On the other hand, the reaction of Member States on this point illustrates that there are different views also between the Member States: *“the United Kingdom believes that consular assistance, with which Article 23(1) TFEU and the European Commission’s Green Paper and Action Plan are concerned, must be distinguished from the provision of visa, passport and notarial services.”*¹⁹⁶ *Accordingly, the United Kingdom has stated that ‘Member States are under no obligation to provide these services to unrepresented nationals on a non-discriminatory basis.’*¹⁹⁷ *Thus, consular assistance under Article 23(1) TFEU is limited to the list of services under Article 5 of Decision 95/553/EC and does not include other consular services (with the exception of crisis situations). This*

¹⁹⁵ Only the Estonian and Latvian provisions may be interpreted as also including diplomatic protection. Section 53(1) of the 2009 Estonian Consular Act provides that: *“A representation of the Republic of Estonia protects the interests of a citizen of a Member State of the European Union if the Member State of the European Union where the person is a citizen does not have a representation in the receiving State and if the receiving State has no objections thereto.”* The Lithuanian Consular Statute, in section 11(2), provides that consular missions should assist and protect the personal, material and other rights and interests of those EU citizens who have no consular representative in a specific area.

¹⁹⁶ *Ibid* at para. 4.3.

¹⁹⁷ *Ibid*.

includes provision for assistance in cases of arrest and detention, accident or serious illness, acts of violence, death and repatriation, and financial advances for citizens in difficulty. Thus, the degree of consular assistance that is potentially available to EU citizens is limited in nature." In contrast with the UK's approach, other Member States are willing to provide assistance to Union citizens beyond the limited circumstances laid down in Art. 5(1) of Decision 95/553/EC and this intention results either from bilateral agreements concluded with other Member States after the entry into force of the Maastricht Treaty (Austria¹⁹⁸, Belgium, Hungary, Luxembourg¹⁹⁹) or from the national provisions adopted for the purpose of implementing the former Art. 20 TEC (the Czech Republic²⁰⁰, Estonia²⁰¹, Latvia²⁰², Lithuania, Sweden²⁰³, Spain). If the future measures adopted by the Union in this field choose to develop only consular protection, it is recommended to ensure that it does not affect in any way the right to diplomatic protection of Union citizens.

Turning to the issue of implementation of the EC and CFSP Decisions in the national legal orders, the Institutions of the Union have highlighted on numerous occasions the importance of the implementation and respect of these Decisions by all of the EU countries, regardless of the fact that they are not Union acts, but parallel agreements concluded between the Member States. The comparative analysis carried out in [Section 2.3.1](#) clearly demonstrates that not all of the EU countries have implemented Decision 95/553/EC²⁰⁴. On the other hand if they have adopted implementing measures, they are of a different ranking and transparency: legislation, executive acts or only guidelines. The duty of cooperation in good faith places the Contracting Member States under a duty to exercise their international powers without detracting from EU law or from its effectiveness. As far as the new Member States are concerned, the express provision in the Accession Treaties of the obligation to accede to the Decisions of the Representatives of the Governments of the EU Member States brought the fulfilment of the accession procedure to the Decisions under the ambit of the EU law. Therefore, the new Member States are bound by the principle of sincere cooperation and the principle of internal administration to take the necessary internal measures for the proper internal application of the Decisions. The number of EU countries adopting implementing measures for the Decision 96/409/CFSP is even less and the status regarding the legal

¹⁹⁸ See the Agreement between the Federal Minister for Foreign Affairs of the Republic Austria and the Foreign Minister of the Republic of Hungary on cooperation of foreign representatives which entered into force on 20 December, 2005.

¹⁹⁹ The *Convention entre le Grand-Duché de Luxembourg et le Royaume de Belgique relative à la coopération dans le domaine consulaire du 30 septembre 1965* (Mémorial A n° 51, 21 September 1966, p. 954-957) includes a list of consular functions which goes beyond the limited list of Art. 5(1) of Decision 95/553/EC and encompasses some of the consular functions provided in Art. 5 of the Vienna Convention on consular relations, such as notarial functions.

²⁰⁰ According to Art. 4(2) of the Guidelines on consular assistance of EU citizens, "*Moreover, the mission can assist – in accordance with its competences – citizens of the European Union which have requested for it in other situations.*"

²⁰¹ Section 53(2) of the 2009 Consular Act: "*At the request of a Member State of the European Union, consular assistance shall be provided if a citizen of the country is in an emergency, has been detained or is serving a sentence, also in the event of death or other unforeseeable and extraordinary circumstances.*"

²⁰² Section 11(2) of the Consular Statute provides that "*consuls should assist and protect personal, material and other rights and interests of those EU citizens who have no consular representative in a specific area.*"

²⁰³ According to Regulation ([UF 1996:9](#)) regarding Assistance to Union Citizens.

²⁰⁴ **Bulgaria, Italy, Poland, Slovakia, Netherlands and UK.** The national Reports on the foregoing EU countries state that there is no specific act whatsoever, they merely point out that the Decision is considered to be directly applicable under their domestic legal orders based on the explanation that it is part of the EU law which, in turn, is directly applicable in their domestic legal orders. According to the national Report on the Netherlands, the EC Decision was published in the Official Journal.

force and transparency of these implementing measures is similar to that implementing the EC Decision²⁰⁵. Despite these diverse ways of implementation, all national Reports mentioned that their respective EU countries closely follow the principles set out in the CFSP Decision.

An additional discrepancy between the Member States related to the measures implementing the EC and CFSP Decisions is the lack of transparency of these measures in certain of the Member States: **Austria**²⁰⁶, **Belgium** (partial transparency - the Decision has been published in the Official Journal but the further circulars and instructions adopted for implementing it are not available to the public), **Bulgaria**, **Cyprus**²⁰⁷, **Denmark**, **Germany**, **Ireland**, **UK**.

The majority of the national Report mentioned that the EU countries have not started negotiations for the conclusion of international agreements with third States for the purpose of extending the exercise of their consular and diplomatic protection to unrepresented Union citizens of other Member States, with the exception of Italy and Portugal. Most of the Member States have informally notified third countries authorities about the protection of other Union citizens. However, it is obvious that conveying information in this way cannot be considered a fulfilment of the obligation on the Member States under former Art. 20 EC Treaty and now under Art. 23(1) TFEU. The only way to avoid the exercise of discretion left to third countries under Art. 8 of the VCCR and Art. 6 of the VCDR is to conclude formal international agreements. This is the only way to ensure legal certainty and transparency of consular and diplomatic protection for Union citizens since it will prevent third countries from unilaterally changing their previous position and refuse the exercise of Art. 23 TFEU by the Member States. However, so far, the Member States have shown that when they are left to act alone, they will not fulfil their obligation under what is now Art. 23(1) TFEU, which is why the option of the Union to insert a standard clause in the existent international agreements with third countries and to negotiate international agreements with those third countries with which the Union does not as yet have agreements may be a faster procedure to ensure that Art. 23 TFEU is effective. At this time, the Union has shared external competence in this field, and the Member States may agree to delegate the process of negotiation with third countries the inclusion of a standard clause to the Commission. Whenever the Union negotiates this standard clause, it is important to emphasise that though it is the Union who negotiates the clause, those responsible for exercising the right are the diplomatic and consular missions of the Member States and not primarily the Union delegations.

2. Is consular protection a right of the citizens under the domestic legal orders?

According to the national Reports, less than half of the EU countries confer on their citizens a right to consular assistance, certain Member States confer consular assistance only as a matter of policy, reserving a high margin of discretion with regard to the decision on who should receive such assistance and the exact services that are included under the consular assistance procedure. This latter category of Member States usually considers consular assistance as a help to self-help.

²⁰⁵ Examples of good practice can be found in the **Austrian, Greek, Czech, Latvian, Luxembourg, Portuguese, Slovenian** legislation, which implemented the Decision by way of precise and transparent legislative or executive national provisions.

²⁰⁶ The Decision was published in the Federal Law Gazette III No.254/2002. However, later executive acts – circulars – adopted for the purpose of implementing Decision 95/553/EC are not publicly available.

²⁰⁷ The implementing executive measures are not public, however, most of their provisions are to be found in the guidelines on the application of Decision 95/553/EC which have been made public via the website of the MFA of Cyprus.

3. The different legal force of the national provisions providing a right to consular protection

Even between the EU countries conferring a right to consular protection, there is discrepancy regarding the legal force of the internal norm providing the right. Thus, in certain EU countries the right is a fundamental right embodied in the Constitution, in others it results from a legislative provision adopted or amended by the national Parliament. Still other EU countries have no specific legislative provision, however, there is common agreement between the national Rapporteurs and the national academia that consular protection is granted as a right based on the interpretation of the specific national legislation, as a whole, and the relevant national case-law²⁰⁸.

4. The different levels of coherence of the domestic legislation regulating the field of consular protection

Concerning the domestic legislation on consular assistance, all of the EU countries have ratified and implemented the Vienna Convention on consular relations, but some of them have remained at this level, meaning that they do not have domestic legislative norms concerning consular and diplomatic protection apart from the law implementing the Vienna Convention on Diplomatic Relations²⁰⁹. Most EU countries²¹⁰ do not have a uniform domestic legislative framework regulating the field of consular assistance. In fact, the relevant provisions are scattered in different national acts with different legal force dealing with different aspects of consular activity, such as the competences of the Ministry of Foreign Affairs, passports, consular fees, honorary consuls, free movement of citizens. On the other hand, nine Member States do have a consular statute, i.e., a sole normative act that includes all of the relevant norms regulating the organisation of consular posts, appointment and career of consular officers (including in some cases honorary consuls), powers and liability of consular officers, activities of consular officers (some of these statutes distinguish cases of consular assistance from other consular services). Certain EU countries have declared their preference for regulating the field by way of policy, and according to the national Reports some are clearly against regulating it by way of the law²¹¹.

5. The different material scope of consular protection in national legislation

In relation to the material scope of consular protection, it has to be observed that basically all 27 Member States provide consular protection in the circumstances mentioned in Art. 5(1) of Decision 95/553/EC, namely, death, serious accident or serious illness, arrest or detention, victims of violent crime, relief and repatriation of distressed citizens (in the case of natural disasters, civil unrest, armed conflict or other crises). In addition, all Member States offer assistance in the event of the loss of travel documents, which coincides with the circumstances foreseen in Decision 96/409/CSFP. However, certain EU countries are willing to go beyond the list of consular functions

²⁰⁸ See more on this in Section 4.1.

²⁰⁹ **Belgium, Cyprus, Luxembourg, UK.** In **Austria**, the legal basis for consular assistance is the Vienna Convention on Consular Relations, however, the Treaty has not been implemented by way of a separate internal act. Therefore, the legal basis of consular protection rests mainly on the VCCR norms; see in more detail [Section 2.4.1](#).

²¹⁰ **Bulgaria, Czech Republic, France, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Romania, Slovakia Spain, and Sweden.**

²¹¹ **Ireland, the Netherlands, UK.**

laid down in Art 5(1) of Decision 95/553/EC (the Czech Republic²¹², Estonia²¹³, Latvia²¹⁴, Lithuania, Spain²¹⁵, Sweden²¹⁶).

There are also exceptional situations when the ETDs can be issued which, according to Annex II of the Council Decision 96/409/CFSP are when travel documents are lost, stolen, destroyed or temporarily inaccessible. Most of the EU countries transposed exactly this provision, thus issuing an ETD for an EU citizen in all of the above mentioned situations. Specific national Reports mention that their national implementing legislation provides for a more limited number of situations than under the EU law framework²¹⁷.

6. The different personal scope of consular protection under the national legislation

As a general rule, all national Reports mention that the EU countries confer consular protection to unrepresented Union citizens in the same way as they confer to their own citizens. However, own nationals benefit of the entire list of consular functions laid down by the VCCR while the non-nationals Union citizens benefit only of the consular functions laid down in Art. 5(1) of Decision 95/553/EC, certain Member States extending also other consular functions – usually the extension is made on a case-by-case basis.

Usually, long-term residents, stateless persons, refugees, asylum seekers and non-EU family members are not included in the personal ambit of consular assistance. However, certain exceptions have been identified by the national Reports²¹⁸, an exception mentioned by all of the national Reports refers to cases of emergency evacuations. As a general rule, consular assistance is not given to bi-nationals in the States of their other

²¹² According to Art. 4(2) of the Guidelines on consular assistance of EU citizens, “*Moreover, the mission can assist – in accordance with its competences – citizens of the European Union which have requested for it in other situations.*”

²¹³ Although section 53 of the 2009 Consular Act is not clear enough whether paragraph 2 should be interpreted as restricting the material scope of paragraph 1: “*Provision of consular assistance to citizens of Member States of European Union: (1) A representation of the Republic of Estonia protects the interests of a citizen of a Member State of the European Union if the Member State of the European Union where the person is a citizen does not have a representation in the receiving State and if the receiving State has no objections thereto. (2) At the request of a Member State of the European Union, consular assistance shall be provided if a citizen of the country is in an emergency, has been detained or is serving sentence, also in the event of death or other unforeseeable and extraordinary circumstances.*” On the other hand it has to be noticed that Estonia has very few representations and it will probably be more in a situation of requesting consular assistance than providing it, which limits the relevance of the aforementioned question of interpreting the two paragraphs of section 53.

²¹⁴ Art. 11(2) of the **Consular Statute** provides that consuls should assist and protect personal, material and other rights and interests of those EU citizens who have no consular representative in a specific area.

²¹⁵ See Circular Order n. 3.213

²¹⁶ According to Regulation (UF 1996:9) regarding Assistance to Citizens in the European Union, **Swedish** embassies and consulates may assist Union citizens in other matters. See more on this in the national [Report on Sweden](#). See also the Helsinki Treaty, the Baltic Treaty, the Convention on consular cooperation between the Grand-Duchy of Luxembourg and the Kingdom of Belgium of 30 September 1965, and the Agreement between the Federal Minister for Foreign Affairs of the Republic of Austria and the Foreign Minister of the Republic of Hungary entered into force on 20 December 2005 which provide for a wider list of consular functions than under Art. 5(1) of Decision 95/553/EC. This latter subject is detailed in [Section 2.1.2](#).

²¹⁷ See in this sense, the national Report on **Bulgaria**, which mentions that the cases of destroyed and temporarily inaccessible travel documents are not stipulated by the Bulgarian law. So far no problems have occurred in practice, however, this is mainly due to the fact that there have not yet been many applications for issuance of ETDs from other EU citizens than Bulgarians.

²¹⁸ See [Table 12](#).

nationality. In certain EU countries, there is not yet a well-developed practice or legislation as to whether these categories of persons fall or not under the personal ambit of consular protection²¹⁹.

According to the national Reports, the categories of persons that can receive an ETD are usually the same as those that can receive consular protection. However, there are certain exceptions where ETDs are given also to the refugees, stateless persons and beneficiaries of the subsidiary protection and for the members of their families²²⁰. Certain national Reports mention that their respective countries confer consular assistance to certain of the aforementioned categories of persons in the same conditions as for nationals/EU citizens but only as a matter of policy²²¹.

7. Is consular protection subject to judicial review under the national legal orders? Availability of national judicial remedies to Union citizens.

From the legal point of view, one of the most important questions concerning consular protection is whether consular protection is considered a legal right with all the necessary legal guarantees which may effectively be demanded by the citizens if there are all the objective requirements for its exercise to be fulfilled (situation necessitating consular protection). The legislation and jurisprudence of the Member States differ on this issue so that in some EU countries the administrative and judicial procedures available in cases of consular protection is denied²²². The common feature is that most of the EU countries consider the acts of the consular and diplomatic officials as administrative acts governed by the relevant domestic administrative legislation. However, the EU countries recognising a high level of discretion for the executive to act in this field will maintain this level of discretion should be untouched by the judiciary. Thus, a legal challenge may involve high costs and also not be of much help for the citizen who needs urgent consular assistance. Consular assistance can be considered as a “one time” service of the State where the citizen has little interest for review after the distressing situation has been solved, with or without the sufficient support of the consular services. Moreover, not many people seem to know about the review procedure. Those Member States which do not provide for judicial review of a denial of consular protection or of discriminatory consular protection exercised under Articles 23 TFEU and 46 of the Charter are obliged on the basis of Art. 19 TEU, Art. 47 of the EU Charter and the jurisprudential principle of effective judicial protection²²³ to enable unrepresented EU citizens who have approached the Member State concerned for consular protection under EU Law to subject the decision of their consular officers to judicial review.

Should a Member State, without justification based on the principle of proportionality, refuse to provide consular protection or provide consular protection without respecting

²¹⁹ **Bulgaria, Czech Republic.**

²²⁰ See more on this exceptions in [Section 5](#).

²²¹ See in this regard [Table 12](#), in particular, the part on **Cyprus, Ireland, UK**, and the other EU countries seeing consular assistance as a matter of their internal policy.

²²² **Austria, Belgium, Czech Republic** – according to the national Reports, these countries argue that there is no legal obligation to confer a judicial remedy on their own citizens or EU citizens, since they do not recognise a right to consular protection. Certain EU Member States only allow for an administrative complaint (**Cyprus, France, Italy**). **Finland** and **Estonia** do not give the possibility of making a judicial complaint against the refusal to provide financial assistance.

²²³ Case 222/84 *Johnston* paras. 18 & 19, Case C-50/0 P *Unión de Pequeños Agricultores v. Council* para. 39, Case C-467/01 *Eribrand* para. 61 and Case C-432/05 *Unibet (London) Ltd. and Unibet (International) Ltd. v. Justitiekanslern*.

the equal treatment principle, then the affected EU citizens may claim compensation for damages caused by the aforementioned acts of the Member State.

8. Different basis and circumstances when financial assistance for consular assistance services is conferred

Generally speaking, the costs for assistance services necessary abroad to people in emergency situations are borne by the beneficiary or his/her relatives. Financial advances can be given by the consular and diplomatic missions only in exceptional circumstances, usually in cases of extreme urgency and the national concerned does not have any other way of solving his/her problem. This kind of financial aid is provided mostly for the purpose of helping citizens to return to their home country (repatriation). In this case, some of the Member States will give financial advances in cash, others will only buy travel tickets which will then be given to the citizen in need. There are cases when no financial advances are given, due to lack of funds allocated for this purpose. This practice is understandable since, given the now scarce financial and human resources, consular and diplomatic services must concentrate on the best use of their budgets, e.g., encouraging citizens to pool all available resources, also private resources, to help themselves. The actual work load of a consular post is difficult to predict as it depends very much on the travel habits of citizens and catastrophes that cannot be easily predicted in advance.

9. Differences in reimbursement procedures

In catastrophes, Member States are very willing to work together in order to help their citizens and also other EU citizens. In practice, the entity with the responsibility of reimbursing the financial advances, as highlighted by the national Rapporteurs, differs in the EU countries. Several national Reports mention that it is the competent authority of the Member State of nationality of the assisted EU citizen which has to directly reimburse the assisting Member State²²⁴. Other national Reports mention that reimbursement is accepted also from the assisted EU citizen, however, if he/she cannot reimburse, then it will be his/her State of nationality to reimburse the financial advance²²⁵. It should be pointed out that, according to the information provided by the national Rapporteurs, some EU countries have no particular established reimbursement procedures for assisted EU citizens, usually, in these cases, the procedure will be the same as that applied to their own nationals²²⁶. Certain national Reports mention the lack of an established practice on the procedure of reimbursement is caused by the fact that there has so far been no request nor a consequent payment to an EU citizen²²⁷.

²²⁴ **Estonia, Hungary, Ireland, Italy, Lithuania, Romania and Sweden.**

²²⁵ A case of the highest flexibility has been shown in the national Report on **Cyprus**. Accordingly, the party to make the reimbursement can be the assisted EU citizen, his/her family, the Embassy of her/his State of nationality in Nicosia, or his/her Government. The entity to which the reimbursement is made can be the Minister of Foreign Affairs in Nicosia, or if there is an Embassy of Cyprus in the country of origin, his/her friends or government may deposit the necessary amount of money at the Cyprus Embassy. The reason for this flexibility is the fact that the financial advance given by Cyprus to an EU citizen does not come from Cyprus' financial resources, but a previous deposit in the quantum of the requested amount of money has to be transferred to the above mentioned authorities.

²²⁶ **Belgium, Bulgaria, Greece, Ireland, Luxembourg, Slovakia, Spain and UK.**

²²⁷ **Austria, Luxembourg, Malta.** See more details on the practice on the reimbursement procedure in [Section 4.8](#).

10. Different approaches of the Member States to the obligation to inform the citizens of the Union right to consular and diplomatic protection

There is a lack of a common approach by the Member States to the appropriate means of informing the citizens about their right under Art. 20 (2)(c) TFEU²²⁸.

On a local or regional level, the consular services of Member States seem to establish a working network of assistance that is barely known to citizens but according to certain national Reports seems to work effectively as “an invisible hand” in the day-to-day handling of consular assistance to EU citizens.

11. Different policies regarding statistical data

Despite the critique brought by the Commission in the 2007-2009 Action Plan: (“*Most Member States do not keep records of the exact numbers of requests for consular assistance*”), the comparative analysis of the national Reports shows that statistical data are still insufficient. On the basis of the information provided by the national Rapporteurs, it seems that most of the EU countries do not consider it necessary to collect precise data. On one hand, certain national Reports base this decision on financial reasons whilst other EU countries are reluctant, on the other hand, to provide precise and detailed data for reasons of public security or public sensitivity. Anyhow, on the basis of collected data, it can be said that the number of instances of consular assistance is high which underlines the need for consular assistance for the Union citizens outside the borders of the Union. Even in case of official statistics, serious under reporting of consular services appears to exist.

In light of all these differences relating to the various aspects of the right to consular assistance, it is logical that EU citizens are confused or lack precise information on their exact rights. Moreover, the national Reports point out that in certain situations, usually in situations of emergency, the Member States adopt a case-by-case approach, which makes it difficult for Union citizens to understand the exact types of services they can receive from the Member States.

Some final remarks need to be made about the role of the European External Action Service (EEAS) in the field of consular and diplomatic protection. Decision 2010/427 of 26 July 2010 establishing the EEAS, in Art 5 (10), provides that: “*The Union delegations shall, acting in accordance with the third paragraph of Article 35 TEU, and upon request by Member States, support the Member States in their diplomatic relations and in their role of providing consular protection to citizens of the Union in third countries on a resource-neutral basis.*”

Despite the limited powers of supporting the Member States when the latter so request, the role of the EEAS is not insignificant and this is shown by Art. 13(2) of the same Decision which states that: “*The High Representative shall submit a report to the European Parliament, the Council and the Commission on the functioning of the EEAS by the end of 2011. That report shall, in particular, cover the implementation of Article 5(3) and (10) and Article 9.*” [emphasis added]. The Report on EEAS activity in the consular and diplomatic assistance area may reveal, in a similar way that the Commission Reports on Union citizenship did in its domain, the necessity to adopt further actions to respond to problems that occurred in practice. If the EEAS role in this

²²⁸ The national Report on **Sweden** points out that one of the reasons for lack of practice under Art. 23 TFEU is that citizens are not fully aware of this right.

area was insignificant, then there would have been no need to include this subject matter in the Report on the EEAS' activities. However, the Union Institutions perceived this activity of the EEAS as open to changes and amendments. Therefore, the role of the EEAS in the area of international protection of Union citizens is now incipient and open to increasing power in the future. According to certain of the Country Correspondents, certain EU countries with limited resources and few consular missions see an increased role for the EEAS in the area of consular and diplomatic protection of Union citizens as desirable (e.g., the national Report on Latvia expressly recommends such a solution whilst, on the other hand, the UK which has already made its position public is a strong opponent of this idea).

Another research study requested by the European Parliament's Committee on Foreign Affairs on the *Strengthening the EU's external representation: the role of the EEAS on the Union's external representation* argues for a similar stronger role of the EEAS in the area of consular and diplomatic protection. Professor Whitman²²⁹ argues that the role of the EEAS in the area of consular matters should not be restricted to the current role of the Union's institutions in crisis situations²³⁰ and maintains it was definitely intended to be broader than what is currently provided in the Council Decision on the establishment of the EEAS, Art. 5(10): *"to support the Member States in their diplomatic relations and in their role of providing consular protection to citizens of the Union in third countries on a resource-neutral basis"*. Professor Whitman acknowledges that some of the Member States wish to empower the Union delegations, which are now part of the EEAS, to take certain consular matters under their responsibility, similarly to what the conclusions of some of our national Rapporteurs on the matter:

*"An attraction for some national governments of the new External Service is the possibility that in the medium to long term it may be able to take over some or all of the responsibilities exercised currently by national representations abroad – especially if one considers that the economics of national representation have become more and more costly. This prospect is an entirely feasible one for consular matters. There is no reason at all why in ten years time the Union representations in third countries, particularly small third countries geographically remote from Europe, should not carry out consular duties for all EU citizens in the countries to which they are accredited and in particular provide Schengen visas to citizens of these countries wishing to visit the EU. The emergence of a specialized corps of consular officials within the External Service would be an entirely logical development, demonstrable proof of the Union's ability to save the money of European tax-payers by common action."*²³¹

²²⁹ Professor Whitman is the Rapporteur of the Research Project launched by the European Parliament on the role of the EEAS.

²³⁰ On the role of the Union Institutions before the entry into force of the Lisbon Treaty, see Madelene Lindstrom, *EU Consular Cooperation in Crisis Situations* in *Crisis Management in the European Union – Cooperation in the Face of Emergencies*, edited by Stefan Olsson, 2009: *"Overall the EU institutions do not have any direct consular tasks but rather serve as facilitators supporting the Member States to assist their citizens, for example by providing help with logistics such as transportation and communications. Within the EU structure the Council Secretariats Joint Situation Centre (SitCen) plays the most prominent role in this regard assisting the Presidency or the designated Lead State with the management of communications, especially with Brussels and in the framework of the Crisis coordination arrangements (CCA)."*

²³¹ See page 7 of Whitman's Report available at <http://tepsa.be/Whitman%20Strengthening%20the%20EUs%20external%20representation.pdf>

Chapter Four: Conclusions and recommendations

The EU law framework

- Art. 20 TFEU provides a non-exhaustive list of rights for Union citizens, among which the right to protection by consular and diplomatic agents can be found as an individual right of each Union citizen.
- Union citizens can invoke this right enshrined in Art. 20(2)(c) TFEU directly before the national courts.¹
- The content of Arts. 20(2)(c) and 23 TFEU makes the principle of non-discrimination based on nationality between the Union citizens applied in the specific area of consular and diplomatic protection of Union citizens visible.
- This protection is implemented when one of the present 27 Member States is not represented in the place outside the Union where the Union citizen is located (Decision 95/553/EC, Art. 1, defines the concept of “unrepresented Union citizen”).
- According to the present status of Union law, the rationale of the content of the right enshrined in Art.20(2)(c) TFEU is the right to protection of unrepresented EU citizens abroad. The principle of non-discrimination on the basis of nationality is one of the leading aspects of Part II of the Treaty on the Functioning of the European Union focusing on “non-discrimination and EU citizenship”: therefore, each of the provisions contained in Part II (electoral rights, free movement, residence rights, protection of the citizen throughout the world, etc.) is inspired by the general principle of EU law on non-discrimination based on nationality.
- It has to be noted that on several occasions², certain consular representatives emphasised that the content of the right embodied in the then Article 20 TEC (now Article 23 TFEU) is a simple clause of non-discrimination which may be further developed and upgraded to a “right” in the future³. This formalistic approach is not well-grounded: indeed, in the light of Article 18 TFEU, “all” TFEU provisions are

¹ The wording of now Arts. 20 and 23 TFEU is clear and unconditional, replacing the previous solely inter-governmental implementing measures with Council directives in addition to the Member States' necessary implementing measures. Thus, according to the *Van Gend en Loos* doctrine, the right to consular and diplomatic protection, in the same way as the other rights laid down by Art. 20 TFEU, is directly effective.

² See Summary Report of Public Hearing of 29 May 2007 on the Green Paper on Diplomatic and Consular Protection of Union Citizens in Third Countries.

³ This conclusion is also reached in most of the national Reports, specifically those on the UK and Ireland.

affected by the principle of prohibition of discriminating against the nationality. Therefore, this argument on reducing Article 23 TFEU to a “simple clause of non-discrimination” is not convincing as it lacks inner strength in the systematic reading of Part II of the TFEU. Moreover, this argument is not consistent if placed in a systematic analysis of the TFEU, also because it assumes that Article 23 TFEU is simply reduced to being a “remake” of Article 18(2) of TFEU, albeit with a different legislative procedure⁴.

- The exact content of the right has been the subject of fervent critique in legal literature⁵ and also by certain of the Member States, as results from the national Reports⁶. The main allegations concern the lack of clarity of former Art. 20 EC Treaty and, consequently also of Arts. 20(2)(c) and 23(1) TFEU, the legal literature arguing that it was and it still is even after the Lisbon Treaty unclear whether the drafter of the Treaties intended to confer both a right to consular and diplomatic protection and, if intended to confer a right to diplomatic protection, then the article is flawed. From the Resolutions of [11 December 2007](#)⁷ and [25 November 2009](#)⁸ it appears that the European Parliament has raised high expectations that the European Commission can give impetus to this right and definitively settle the unclear points in further initiatives and proposals.

- In addition, the ministerial representatives of Member States gathered in the relevant working groups or intervening in the debates on the protection of EU citizens abroad argue that it is not clear whether the drafters at the Intergovernmental Conference (IGC) of Maastricht referred to consular protection or assistance, since in certain Member States, consular assistance and consular protection are two distinct concepts. This discussion only shows the gap of understanding which exists between, on one side, the drafters (Heads of State and government) at the IGC and, on the other, the ministerial dimension of consular and diplomatic work. When drafting Art. 8c of the EC Treaty, the Member States had in mind to protect Union citizens in situations of distress, without thinking of a purely formalistic distinction between consular protection and consular assistance concepts.

- In light of Arts. 3, 8, 17 and 70 of the Vienna Convention on Consular Relations and Arts. 45(c) and 46 of the Vienna Convention on Diplomatic Relations, and Art. 46 of the EU Charter and of Union soft law and the preamble of the TEU, it becomes clear that Arts. 20 and 23 TFEU have, as their subject matter, both the right to consular and diplomatic protection. However, so far, it seems that the focus has been on developing

⁴ The future directive will build a common content of a right to consular and diplomatic protection, merely trespassing on the clause related to prohibition of non-discrimination based on nationality

⁵ T. Stein, Interim Report on “*Diplomatic Protection Under the European Union Treaty*”, in: ILA Committee on Diplomatic Protection of Persons and Property, Second Report (New Delhi, 2002), p. 32-39; Annemarieke Künzli, *Exercising Diplomatic Protection The Fine Line Between Litigation, Demarches and Consular Assistance*, ZaöRV 66 (2006), p. 321-350; Patrizia Vigni, *Diplomatic and consular protection: Misleading Combination or Creative Solution?*, EUI Working Paper, 2010; C. Closa, *Citizenship of the Union and Nationality of the Member States*, 32 CMLRev. 1995, p. 487-519;

⁶ See the national Reports on France, Ireland, Poland, UK. In addition, see also the contribution of the Portuguese delegation during the written and oral stages of the public hearing held in Brussels on the European Commission’s Green Paper on Diplomatic and Consular Protection of Union Citizens in Third Countries.

⁷ P6_TA(2007)0592

⁸ P7_TA(2009)0090

implementing measures only on consular protection, which does not mean that Art. 20(2)(c) TFEU does not confer a right to diplomatic protection. The circumstances when Union citizens require consular assistance are far more numerous than those when Union citizens are in need of “diplomatic protection” in the traditional sense of State protection for an internationally wrongful act. In the traditional concept of international law, consular assistance being a preventive intervention, while diplomatic protection is remedial, it is normal that it is desirable to develop preventive measures which do not pose delicate diplomatic and foreign policy problems. As regards the contention of the Member States that it is not clear whether the content of Art. 20(2)(c) TFEU refers to consular protection or consular assistance, it seems that this discussion has no practical reason to continue to exist: Union law does not make a strict distinction between these two concepts. They are sometimes used inter-changeably in Union soft law. Union primary law uses only the concept of “protection”, while Decision 95/553/EC refers to “assistance” when enumerating the cases that fall under the concept of consular protection. If, according to domestic legislation, consular assistance and protection are two distinct concepts and the issue will be raised before a national court or tribunal, then, on the basis of Art. 267 TFEU, the ECJ will have the opportunity to clarify the meaning of Art. 20(2)(c) TFEU in light of the issue referred in the preliminary question. Awaiting an interpretation from a possible ruling of the ECJ, at this stage, however, this terminology discussion does not bring us any effective conclusions. The EU legal order, that is autonomous and independent (in the sense of *Van Gend en Loos* and *Costa/ENEL*), has established its own mechanism of protection of citizens so far described in Article 23 TFEU and in Decision 95/553/EC and has established its own definition of “protection”. There are several other examples showing the legal terminology of EU law differs from the terminology of international law: for example, the EU legal definition of “goods”, “imported product”, “alien”, “dual use”, “harmonization”, “transit”, “temporary measures”, “national security”, “subsidiarity”, “proportionality”, “shared resources”, “good conduct and good administration”. Another aspect of the “sui generis” nature of this protection is that EU provisions on the protection of unrepresented citizens do not impose the typical requirements of diplomatic protection in international law (clean hands, exhaustion of domestic remedies, etc.) nor the direct link of nationality between the protecting State and the protected citizen: according to Article 23 TFEU, the citizen can ask “any” Member State that is represented in the third country for protection.

- As regards the Union’s internal competence to act in the area of consular and diplomatic protection of Union citizens, Art. 23(2) TFEU expressly provides that the Council has the power, by way of special legislative procedure, to adopt directives at the proposal of the Commission, and after the European Parliament has been consulted. Secondly, the Union – the Council jointly with the European Parliament – can adopt regulations by way of ordinary legislative procedure on the basis of Art. 197(2) TFEU with a view to improving the Member States’ administrative capacity to implement the Union law adopted in this field.

- As regards the Union’s external competence to act in the area of consular and diplomatic protection, according to Arts. 4(1) and 2(2) TFEU, the Union has first of all a shared pre-emptive competence, which based on the ECJ Opinion in *Lugano*⁹, and Art. 3(2) of the TFEU, may become in time, depending on the level of legislation

⁹ Opinion 1/03 (*Lugano Opinion*) of 7 February 2006.

adopted by the Council, exclusive Union competence in the area covered largely by Union legislation. In addition, as the Union has competence under the CFSP, Title V, Art. 35 TEU, to adopt Union decisions in conformity with Art. 25 TEU, the importance of this legal basis should not be underestimated in light of the creation of the European External Action Service (EEAS)¹⁰. Based on the internal competence of the Union under Art. 197(2) and the *ERTA* jurisprudential principle of external competences corresponding to internal Union competences¹¹, based on Art. 6(g), the Union also has an external competence, supplementary to that of the external competence of the Member States. In regard of the fact that the majority of the Member States have not complied with their Union obligation¹² to conclude international agreements with third countries extending their consular protection to all unrepresented Union citizens, nor have they amended the existing international agreements, the Council may obtain delegation¹³ from the Member States to start the process of negotiation and conclusion of agreements having such a clause or the insertion of such a clause in already existing agreements with the third countries. By taking over by the Member States' actual fulfilment of the obligation to start international agreements, the Council will implement a more rapid and effective procedure than by leaving the Member States to act independently and with little chances of real action being taken if in the last 17 years are anything to go by.

EU countries' legislation and practice on consular protection

- Decision 95/553/EC has an EU legal basis (as stated in its Preamble, with a clear reference to Article 8C of the EC Treaty). There is no doubt that it is a part of the EU legal order¹⁴

¹⁰ The Decision establishing the EEAS provides in Art 5(10) that: "*The Union delegations shall, acting in accordance with the third paragraph of Article 35 TEU, and upon request by Member States, support the Member States in their diplomatic relations and in their role of providing consular protection to citizens of the Union in third countries on a resource-neutral basis.*" See Council Decision establishing the organisation and functioning of the European External Action Service 11665/1/10 REV 1 Brussels, 20 July 2010.

¹¹ Case 22/70 *The European Road Transport Agreement (E.R.T.A.): Commission of the European Communities v Council of the European Communities*.

¹² This obligation of the Member States was, for the first time, laid down in Art. 8C of the Maastricht Treaty and at that time also provided a deadline for fulfilment of the obligation – by 31 December 1993. The deadline was not respected and nor was the subsequent obligation as laid down in the following Treaty' amendments.

¹³ Since, at this time, the external competence of the Union in the field of consular and diplomatic protection is shared competence, the conclusion of international agreements with third countries in this field will require the participation of the Member States in accordance with the format of the mixed participation in negotiation and conclusion procedures (implementation will mainly lay with the Member States). In order for the Union to participate as a sole actor in the negotiation and conclusion of these agreements, which is a more rapid and effective procedure, the Council has to obtain the unanimous consent of the Member States.

¹⁴ The Decision has former Art. 20 EC Treaty as a substantive legal basis, in fact, this decision is the only type of measures that can be adopted for the implementation of former Art. 20 EC Treaty, since the Union lacked competence to act. The Member States were thus fulfilling their "Community" obligations under former Art. 20 EC Treaty when they adopted the aforementioned Decision. Based on the existence of a substantive Community legal basis and the fact that the Decision was the result of the Member States fulfilling their Community obligations, the Decision is to be considered an integral part of the Union legal order.

- Article 20 of the EC Treaty used and present Article 23 uses the imperative “shall” in each paragraph, therefore stressing on the nature of obligations of Member States (namely not only “shall” ensure protection but also “shall” start the necessary negotiations, logically with third countries to obtain their consent to the exercise of protection by any of the Member States). Also the Preamble of Decision 95/553/EC stresses the nature of the “obligation” contained in Article 8C (eventually numbered as Article 20 of the EC Treaty in 1997). From our comparative analysis, it clearly results that not all of the EU countries have implemented the Decision 95/553. On the other hand, EU countries adopted implementing measures but with different legal ranking and transparency: legislative acts and governmental decrees or only guidelines (circulars).

- About the ranking of implementing measures: in several judgments, the Court of Justice has never accepted administrative guidelines as implementing treaty provisions or measures of EU Law¹⁵. Moreover, the Court of Justice has argued that EU Law (previously EC Law) may not vary from one EU country to another: this means that implementing provisions have to comply with the principle of the uniformity of EU law and shall ensure uniform implementation of Union law as well as uniform standards of protection¹⁶.

- The Member States must be aware of the fact that due to their non-fulfilment of their obligation under Art. 23(19) TFEU, the European Commission could open an infringement procedure (Article 258 TFEU) against the concerned Member States. The breach can be founded in the non-fulfilment of the relevant provisions of Art. 20 TEC and currently Art. 23 TFEU as well as the implementing measures (Decision 95/553/EC) read together with Article 10 TEC (currently Article 4(3) TEU) with reference to: (i) not starting the necessary negotiations with third countries, (ii) non-implementation of Decision 95/553/EC in some Member States.

- The lack of “necessary negotiations” is a critical issue, justifying an infringement procedure for non-implementing a basic provision of EU citizenship’s law: the reason why Article 23 TFEU stipulates that negotiations are “necessary” is because these negotiations aim at binding non-EU countries to accept that any EU citizen can be protected by any EU Member State. Indeed, a non-EU country is not bound by Article 23 TFEU and does have the power to object to the exercise of consular protection for a non-national EU citizen: according to the Vienna Conventions of 1961 and 1963 such an objection is always possible (and, for example, Madagascar can oppose the fact that France protects a Polish citizen in Antanarivo). The refusal from a non-EU country to allow any Member State to protect any EU citizen on the territory of that country will, in fact, deprive Article 23 TFEU of any effective exercise in that territory.

- The duty of sincere cooperation enshrined in Article 4(3) of the TEU places Member States under a duty to exercise their international powers without detracting from EU law or from its effectiveness.

¹⁵ See, *inter alia*, ECJ’s judgements in cases C-159/99, *Commission/Italy*, C-315/98, *Commission/Italy*, C-315/96 *Lopez Export/Hauptzollamt Hamburg-Jonas*.

¹⁶ In fact, EU rules may not vary from one EU country to another (see the recent ECJ judgment in *Melki*, C-188/10, point 50 and in *Wall*, C-91/08, point 70) as such variable legal standards would put the structure and the nature of EC/EU law in danger (see *Acc. San Michele*, joint cases 9/65 and 58/65).

- The legislation of the Member States revealed numerous discrepancies, some being of great importance (for example, with regard to configuration of the "right to consular protection" as an effective individual right of Union citizens, and the justiciability of the citizens' claims against the refusal of conferring this right or breach of the principle of non-discriminatory consular protection).
- All of the national Reports argue that their respective Member States confer, in practice, consular protection to other unrepresented Union citizens. The material as well as the personal scope of the right to consular and diplomatic protection varies considerably from one country to another. Usually, long-term residents, stateless persons, refugees, asylum seekers and non-EU family members are not included in the personal scope of the protection of Article 23 TFEU. Regarding non-EU family members of Union citizens, there seems to be a general approach that in cases of extreme urgency, such as evacuations, the Member States also agree to confer consular protection on this category of person. In certain EU countries, there is not yet a well-developed practice or legislation as to whether these categories of persons fall under the personal ambit of consular protection or whether they do not.
- These discrepancies, however, could be seen, as not having negative effects. In fact, the practice so far has shown that in almost all situations of crisis, Member States have always found an agreement quickly with useful effects for those involved. The practice has shown that the Member States also rapidly reach agreement in regard to economic issues arising from the protection granted. In recent years, partly as a result of the spread of the phenomena of violence and natural disasters, the Member States have embarked on a cooperative self-regulation trend together.
- Despite these recent positive developments, the situation is unsatisfactory because of the uncertainty and unpredictability of the forms of protection: almost all national Reports underline that Member States very often follow a *case-by-case approach*, which can be problematic in terms of legal certainty; a basic requirement for EU membership is respect of the rule of law (Article 2 TEU). One of the aspects related to the "rule of law" is that a State respects the law and that its agents and officials can be made accountable and answerable under the law. A case-by-case approach is inspired by contingent circumstances and it makes it very difficult to adequately inform Union citizens about their rights to consular and diplomatic protection. More generally, the current limitations and ambiguities are a serious draw back to the establishment of genuine European citizenship.

Future developments: initiatives of EU Member States

- Some actions can be taken by the Member States independently of the adoption of implementing Union measures. These actions have to be taken by the Member States in order to comply with their positive obligations under the duty of sincere cooperation of Member States (Art. 4(3) TEU and Arts. 20(2)(c) and 23(1) TFEU).
- Member States should enact consular statutes in order to comply with the Treaty of Lisbon and the EU Charter of Fundamental Rights. Art. 47 of the Charter grants a right to an effective remedy for the enforcement of fundamental rights, *inter alia*, also

consular assistance. A consular statute will give greater awareness to the right to consular assistance according to Art. 23 TFEU but should also provide for standards of consular assistance in order to limit the existing discretion of consular officers. Discretion in exceptional cases should, however, be maintained.

- Member States should introduce a more developed system of reimbursement for the assisting State. The present provision of Art. 6 of Decision 95/553/EC does not provide a good solution as the system strictly requires prior authorization except in cases of extreme urgency. The administrative practice of “withdrawing the national passport” of the EU citizen until he pays back the financial help seems disproportionate to the purpose of reimbursement.
- Member States should not only provide a system for compiling reliable statistics in order to assess the relevance of consular assistance but also provide for a better burden sharing between Member States (to this end, in the future EU Directive, a provision should be inserted. For the purpose of subsidiarity, Member States will be requested to send their statistics to Eurostat which will publish them in a specific section of a thematic report).
- The local or regional networks of consular assistance should be made more transparent to EU citizens to avoid unnecessary work for citizens and also for consular services. Such networks may avoid the option of forum shopping by the EU citizens. Those Member States which have regional or bilateral agreements on consular cooperation concluded among themselves should make sure that they confer the same consular protection to non-national EU citizens, irrespective of whether the latter are nationals of one of the other Contracting Parties or whether they are not ¹⁷.

Future developments: setting a minimum European standard

- It is time that the right to consular and diplomatic protection should no longer linger at a theoretical stage – the European Parliament recommended to the European Commission in the Resolution on the Second Commission Report on Citizenship of the Union¹⁸. Even though the foregoing phrase was pronounced in 1998, it becomes apparent from the national Reports that it still applies **today**. There are several inconsistencies identified between national legislations which point out the need of harmonised action to be taken at Union level.
- The unitary and coherent interpretation of the Union citizen’s rights within the Union achieved through secondary legislation and judicial interpretation by the ECJ should now also be extended to the rights of Union citizens outside the Union.
- The protection of Union citizens is no longer a task purely for the Member States, which have failed to a certain extent to fulfil their Treaty obligations. A stark example

¹⁷ See more on this issue in [Section 2.1](#) of Chapter 3.

¹⁸ The European Parliament “notes that the right to consular and diplomatic protection is still at a theoretical stage and in this context recommends that the Member States should work on a common minimum definition of the protection which any Union citizen may expect from any consular or diplomatic representation of a Member State”.

of this failure to fulfil their Treaty obligations is the lack of amendment of the old international agreements with third states or negotiations of new international agreements for the purpose of including a provision on the extension of the Member States' consular and diplomatic protection to other unrepresented Union citizens. Due to the newly created internal competence of the Union - Art. 23(2) TFEU - the external competence of the Union on the basis of Art. 4(1) TFEU endowing the Council with the competence to conclude international agreements or amending existing ones for the purpose of ensuring the protection of Union citizens and finally the creation of the EEAS in conjunction with Art. 35 TEU as a legal basis, the Union has a wide range of legal and legislative options in order to ensure a "closer union among the peoples of Europe".

- The comparative analysis proposed by this Report emphasises the need of adopting a Union legal measure harmonising the field of consular and diplomatic protection of Union citizens. This legislative measure is finally possible based on Art. 23(2) TFEU, probably being the only measure able to clarify the ambiguities argued by the Member States and in the legal literature in relation to the content of Arts. 20(2)(c) and 23 TFEU. The allegations are that Decisions 95/553/EC and 96/409/CFSP were contrary to primary Union law because they largely limited the subject matter of the protection of the Union citizens by the consular and diplomatic authorities of the Member States to consular assistance for persons in distress, concentrated on the the personal scope of the right to consular and diplomatic protection and were burdened with cumbersome reimbursement procedures. These allegations, however, represent just a few of the most important problems surrounding the right to consular and diplomatic protection of Union citizens.
- The Resolution of the European Parliament of 25 November 2009 presented a reminder for a second time of its Resolution of 11 December 2007 urging the European Commission to consider taking action in the following fields: the need of establishing common protection standards, the setting up of a single European emergency telephone number, the implementation of a proposal for amending Decision 95/553/EC including diplomatic protection, the identification and repatriation of mortal remains, simplified procedures for advancing money, protection to family members of the EU citizen, etc.
- Important progress in this field is that Article 23 TFUE finally empowers the Commission to draft legislative proposals for a future EU Directive.
- Apart from the Commission Recommendation of 5 December 2007 to reproduce the first sentence of the Article of the Treaty related to the protection of unrepresented citizens, this Report does not record any other achievement of the Commission in this field. The narrow ambition expressed in the Stockholm programme and in the working programme of the Commission to limit upcoming legislative proposals for an EU Directive only to the field of financial mechanism of compensation can be seen as a source of concern for the development of this fundamental right of the EU citizen.
- Financial compensation is a recurring issue. It was already highlighted among the several actions proposed by the above mentioned Resolution of the European Parliament of 11 December 2007 and it is understandable that the Member States often face requests for financial aid from unrepresented citizens abroad.

- Specific measures related to financial compensation are feasible, because, already now, they are compatible with a soft law approach to the field. An example could be the establishment of a common fund for assistance in crisis situations and the creation of a general framework for the financial responsibilities of the Member States.
- Making a proposal in this field does not seem to be a difficult task: it should be kept in mind that other financial mechanisms based on financial solidarity among Member States have been successfully established and implemented: this is the case of VAT and of EU external customs duties as they are items listed in the General Financial Budget of the EU. In the view of the above analysis, a legislative proposal on establishing a financial line to provide common resources to protect EU citizens abroad would not demand any greater discussions than those necessary for the (more articulated) “EU own resources” related to VAT and customs duties.
- Addressing the broader scope of the protection, beyond the sectoral aspect of the financial mechanism, it is important to set common standards of protection as a general pre-requirement in any further legislative proposal. Since Art. 20(2)(c) TFEU has clearly included an individual right to consular and diplomatic protection for all Union citizens, irrespective of the Member States where they originate, the Union has to live up to the legitimate expectations of Union citizens and to ensure an effective protection of its citizens which necessitate the development of a common EU-wide understanding of Art. 20(2)(c) TFEU.
- Since the last Decision of 1996 on the Emergency Documents, the Member States among themselves have preferred to draft “consular guidelines” in the Council rather than starting discussion on new legislative proposals. If a Council Directive proposal in this field is presented by the Commission, the Council will have to pay close attention to the principle of institutional sincere cooperation (also considering Article 296(2) TFEU).
- So far, the Union has intervened in the field of consular and diplomatic protection mainly through soft law, through guidelines (administrative circulars). It became evident that this approach is not sufficient for an effective protection of the Union citizens while located in third States. Despite the resistance of those Member States having a more developed network of diplomatic missions towards regulating the field by means of legal measures, the advantages of a legislative measure, particularly in terms of judicial interpretation and access to the courts, are evident and if action through soft law has not brought the sought after results, then they should be achieved by making use of Art. 23(2) TFEU legislative measure.
- Some actions to be included in a future Council Directive can be highlighted:
 - The content of amendments to Decisions 95/553/EC and 96/409/CFSP should be both included in the same legislative measure thereby fixing common standards of protection for EU citizens and family members.
 - In the event that the legislative measure only contains provisions on consular protection, it should be made clear in the Directive that the implementing measure does not limit the Union citizen's right under Art. 20(2)(c) TFEU and

Art 46 of the EU Charter to consular protection. Union citizens still have a right to diplomatic protection, which will be the subject of future Union actions.

- The future Directive should also address the specific situation of EU citizens who are subject to torture. In the REDRESS response to the Commission Green Paper, several problems were identified by this NGO as encountered by the Union citizens in third countries, which should be of concern for the Directive. Some of the problems fall within the ambit of diplomatic protection, which is why the Directive should make it clear that Arts. 20(2)(c) and 23 TFEU also include diplomatic protection and that certain situations that occur in the field require intervention by the consular and diplomatic authorities of the Member States *via* the mechanism of diplomatic protection¹⁹.
- The content of the future Directive should not restrict the subject matter of consular protection to the provisions of Art. 5(1) of Decision 95/553/EC, but, it should allow Member States to go beyond mere consular functions in cases of distress and urgency. Even in the case of routine consular functions, there is a wide range of situations in which EU citizens often ask for help: opening of a will, legalisation of documents, circulating family and personal status documents, celebrating a marriage, delivering a birth or a death certificate abroad. All those situations in the normal life of the expatriated EU citizen must be addressed in the future Union measures to be adopted in this field.
- It should be made clear whether there are any restrictions to the right to consular and diplomatic protection, and if so, what are they (public policy, security and public health have been considered by the Court as reasonable objectives for limiting the other rights of Union citizens).
- The content of the Directive should include all the conditions a Union citizen has to fulfil in order to benefit from consular protection. These conditions should no longer be scattered in different instruments having different legal force, effects and standing before the Court, as is currently the case²⁰.
- According to the “Guidelines” and to Art. 4 of Decision 93/553/EC, the diplomatic or consular representations of Member States in countries where one or several Member States are not represented, may agree on “practical arrangements for the effective management of applications for protection“, and on procedures to determine the Member State authorized to receive such an application. The ambiguous wording of this text does not say any more about the actual scope of such “practical arrangements”. While it is clear from the wording of Article 23 TFEU that it is the EU citizen choosing the protecting State (the citizen, and not the State, “benefits” of the protection), the provision of Article 4 of the Decision may entail several problems: (i) since this agreement is an agreement on the spot, it is very likely that Union citizens will not be aware either of its existence or of its contents. Situations where Union citizens are

¹⁹ Prohibition of torture is provided for not only in international treaties but it has also become a norm of customary international law, which is why when a third country uses torture it automatically breaches an international law obligation, without even being a party to international treaties prohibiting torture. As long as the individual has exhausted all local means to seek redress against the condemnable conduct of the third country’s authorities, the action undertaken by the consular or diplomatic authorities of the Member States helping the cause of the EU citizen no longer falls under consular but under diplomatic protection.

²⁰ Currently, the conditions to be fulfilled by EU citizens in order to exercise the right to consular protection can be found in: the TFEU, Decision 95/553/EC and in ad-hoc arrangements concluded by the Member States present in a specific third country.

directed from one Member States to another Member State's authorities should be avoided in practice; (ii) it may result, in practice, in discrimination among Union citizens, if the Member States represented on the spot agree to name the responsible Member State purely for reasons that, since it does not confer a right to consular protection under its domestic legislation, and that executive discretion is not subject to judicial review, then it can refuse assistance more easily and without legal consequences, thus its assistance costs will be fairly reduced, in comparison with another Member State represented on the spot that confers a right to consular protection and a judicial remedy for refusal of the right under its jurisdiction and, consequently, it will have to bear considerably increased assistance costs. This State-driven situation will lead to a "reverse consular shopping", meaning that a EU citizen may be directed to permanent representations of EU Member States ensuring low standards of protection or fully discretionary processing of requests of protection. If it is decided to include Art. 4 of Decision 95/553/EC in the future Directive, then a carefully thought out solution to the above mentioned problematic situations should be sought.

- The problem of the lack of effective national remedies and procedural guarantees for the refusal to provide protection to an unrepresented EU citizen should be envisaged.
- An updated and centralised list of contact details of the embassies and consulates of the Member States in third countries should be made available to citizens. However, it seems that all previous attempts by Member States in this field since 1992 have been unsuccessful. To-date such an updated list does not exist. The Commission should act on the basis of subsidiarity and establish an Observatory on Permanent Diplomatic and Consular Offices throughout the World.
- "Virtually" extended jurisdiction is a mechanism not complying with Article 23 TFEU nor with Decision 95/553/EC: if a Member State's embassy in Cairo declares it has "an extended jurisdiction" to Gabon (a country laying at the opposite side of the African continent), this declaration is irrelevant for the purposes of Article 23 TFEU and for Decision 95/553 /EC: indeed, the sole "absence of a locally accessible and permanent" representation is the basic and sufficient requirement to entitle the unrepresented EU citizen to claim the protection of another EU State locally.
- Another unclear matter is that of "honorary consuls": they are often local businessmen of the non-EU country, who have a limited mandate and powers. They cannot be considered to have the competence to exercise the same consular functions as a career consul. The national Reports have clearly indicated that the honorary consular task are very limited, and only in few exceptional cases can they issue ETDs. Therefore, the Observatory mentioned above, in listing diplomatic and consular posts of EU countries worldwide, should carefully indicate the effective mandate of each honorary consul.²¹

²¹ For example, putting additional information whether the honorary consul has full powers:

- to deliver emergency travel documents YES/NO,
- to visit a detainee in a jail YES/NO,
- to deliver a legalized certificate of birth or of death YES/NO,
- to give financial aid to an unrepresented citizen YES/NO, etc.

- The Member States should collect and keep an updated and accurate statistical database of all the cases of consular assistance given to their own citizens, Union citizens, and to non-EU family members of Union citizens.
- The Member States should print the wording of Art. 20(2)(c) TFEU on the passports issued to their nationals.

• A final word on the Council Working Groups. This report has carefully analysed the published outcome of the COCON Working Group over about 15 years of its existence. Apart from its initial contribution to Decisions 95/553/EC and 96/409/CFSP, its main production has consisted of “guidelines”, at the beginning not even disclosed or published. In the history of European integration, COCON will probably be recalled as a Working Group whose participants have shown willingness to exchange useful information (as requested by Article 35 TEU) among consuls on what they do in loco. Its greatest achievements have been the administrative consular guidelines. The final recommendation of the present Report is that future discussion on legislative proposals impacting EU citizens’ rights, including the right to protection, should also involve other Working Groups dealing with horizontal matters on EU citizenship’s rights and civil protection mechanisms.

Annexes

Annex I - CARE Workshops

During the CARE project three workshops were held.

The most relevant issues were debated in order to better evaluate the current situation and future perspectives of EU citizens consular protection.

Participants at these workshops were mainly academics and experts on the topic as well as representatives from the Foreign Ministries of several EU countries and from EU institutions.

Here below the programmes of the three workshops are set out.

A volume collecting the proceedings of the three workshops as well as other relevant materials will be published, as a further result of the CARE project.

EU Member States Practice on Consular Protection (Vienna, 29 January 2010)

Opening

Hans Winkler, Diplomatic Academy of Vienna

Introductory Remarks

Erich Schweighofer, University of Vienna

Consular Protection and International Law

Chair: Erich Schweighofer, University of Vienna

Codification of Consular and Diplomatic Protection Law

Gerhard Hafner, University of Vienna

Some Inconsistencies between EU Law and International Law on Consular Protection

Annemarieke Vermeer-Künzli, University of Amsterdam

Consular Protection as a Human Right

Chair: Ursula Kriebaum, Section for International Law and International Relations, University of Vienna

Article 46 of the European Charter of Human Rights

Teresa Freixes, Universitat Autònoma de Barcelona

Discussant: Eva-Maria Poptcheva, Universitat Autònoma de Barcelona

Consular Protection Laws

Chair: Mario P. Chiti, Istituto italiano di scienze amministrative, Bologna

Remarks on the Austrian Consular Practice

Elisabeth Tichy-Fisslberger, Ministry of European and International Affairs, Vienna

German Practice on the Consular Protection Law

Matthias Hartwig, Max Planck Institute for Comparative Public Law and International Law

Remarks on a Future Czech Consular Protection Law

Filip Křepelka, Masarykova univerzita, Brno

Discussant: Nuria Saura, Universitat Autònoma de Barcelona

Round Table on Consular Practice and Human Rights

Chair: Erich Schweighofer, University of Vienna

Erich Schweighofer, University of Vienna:

Overview on Practice of EU Member States (groups I & II)

Anton Geist & Wolfgang Bärnthaler

Overview on Practice of EU Member States (groups I & II, continued)

Mario P. Chiti, Istituto italiano di scienze amministrative, Rome:

Overview on Consular Practice of EU Member States (group III)

Gerhard Hafner, University of Vienna:

Perspectives from the Point of View of International Law

Friedl Weiss, University of Vienna:

Perspectives from the Point of View of European Law

European citizenship and consular assistance: New perspectives in EU law and national law (Bologna, 9 April 2010)

Opening – Introductory Remarks

Franco Mastragostino - SPISA Director – University of Bologna

Mario P. Chiti - IISA President – University of Florence

Sebastiano Faro - ITTIG/CNR – CARE project coordinator

Key Note Speech

Paolo Mengozzi - First Advocate-General European Court of Justice

I Session

Chair Franco Mastragostino

Consular Assistance and the New Provinces of Administrative Law

Stefano Battini – University of Tuscia Viterbo

Giacinto della Cananea - University of Naples Federico II

Aristide Police - University of Rome Tor Vergata

National Experiences

Marilina Armellin – Italian Ministry of Foreign Affairs

II Session

Chair Sebastiano Faro

Diplomatic and Consular Protection of European Citizens: from the Green Paper to Lisbon. Controversial Issues

Alessandro Ianniello Saliceti, European Commission

Erich Schweighofer, University of Vienna

Lucia S. Rossi, University of Bologna

Fay Pazartzis, University of Athens

CARE project research activities

Anton Geist - University of Vienna

Vincenzo Ferraro - IISA

Maria Angela Biasiotti – ITTIG/CNR

Conclusions

Mario P. Chiti

European External Action Service and Consular Protection (Bruxelles, 20 May 2010)

Introduction

Chair: Erich Schweighofer

Erich Schweighofer, Vienna University: **Introductory remarks**

European External Service and Consular Assistance I

Chair: Erich Schweighofer, University of Vienna

Philippe Willaert, European Commission, DG RELEX: **The Draft Council decision establishing the organisation and functioning of the European External Action Service**

Kathleen Verstreken, Council of the European Union: **First comments on Draft Council decision establishing the organisation and functioning of the European External Action Service**

European External Service and Consular Assistance II

Chair: Vincenzo Ferraro, Istituto italiano di scienze amministrative, Bologna

Robert Weiss, Austrian Ministry of European and International Affairs: **Remarks on the Draft Council decision establishing the organisation and functioning of the European External Action Service**

Marilina Armellini, Italian Ministry of Foreign Affairs: **Consular assistance as a right of EU citizens provided by a Member State in co-operation with the EEAS**

Consular network and right to consular protection

Chair: Stefaan Smis, Vrije Universiteit Brussel

Vicente Nieto, European Commission: **Consular protection: a right of EU citizens**
Annemarieke Vermeer-Künzli, University of Amsterdam: **Theory and practice on efforts to improve the consular network: Lead State concept, co-location of consular posts, burden sharing agreements, other agreements between Member States on consular protection**

Roundtable: Improving the consular network for EU Citizens

Chair: Anthony Antoine, Institute of European Studies, Vrije Universiteit Brussel

Marilina Armellin, Italian Ministry of Foreign Affairs
Annemarieke Vermeer-Künzli, University of Amsterdam
Stefaan Smis, Vrije Universiteit Brussel
Erich Schweighofer, University of Vienna
Vincenzo Ferraro, Istituto Italiano di Scienze Amministrative, Bologna
Anton Geist, University of Vienna

Annex II - Country Correspondents Profiles

This annex provides an overview over the experts involved in the CARE project (current function, background, expertise on international law/consular protection).

Austria

Erich Schweighofer

Associate professor at the Vienna University, Faculty of Law, for legal informatics, European law and international law; heading the centre for legal informatics (<http://rechtsinformatik.univie.ac.at>). Having studied law, economics and informatics, he earned PhD degrees in law as well as in business informatics and qualified in interdisciplinary work. His research focuses on information retrieval, legal knowledge representation, automation of law, IT law, and international and European governance. He has published extensively in these areas, in particular, a book on legal knowledge representation and the IRIS (Internationales Rechtsinformatik Symposium/International Legal Informatics Symposium) conference series in his role as main organizer of the biggest legal informatics event in central Europe (www.univie.ac.at/RI/IRIS2011).

Belgium

Stefaan Smis

LL. M. (Vrije Universiteit Brussel, Belgium), Ph. D (Vrije Universiteit Brussel, Belgium).

Professor at the Vrije Universiteit Brussel (Belgium) and Reader at the University of Westminster (UK).

Research interests: Public international law, international dispute settlement, international criminal law, international human rights law, international humanitarian law and regional integration in Africa.

He has recently published on various topics on international law and international relations in books and scientific journals such as *Studia Diplomatica* - the Brussels Journal of International Relations, the *Manchester Journal of International Economic Law*, the *International and Comparative Law Quarterly*, the *Yearbook Monitoring Regional Integration in Southern Africa*.

Bulgaria

Vesselin Paskalev

Master of Law (Sofia University), L.L.M. (Central European University, Budapest), Ph.D. candidate (European University Institute, Florence).

He has been lecturer of European Law and Constitutional law at the New Bulgarian University, the American University in Bulgaria and the Institute of Public Administration etc. He has worked as Chief expert adviser to the Committee of European Integration of the National Assembly and as lawyer in international law companies. He is currently working on a PhD thesis on legal theory and transnational democracy and has publications in the fields of European law and theory of international law. He has been visiting scholar at the University of Oxford.

Evgeni Tanchev

Chief Justice of the Constitutional Court of Republic of Bulgaria, Full professor in Constitutional and Comparative Law at Sofia University Law School, Jean Monnet Chair of EU Law at New Bulgarian University Law School, More than 150 publications including 7 books in the areas of Constitutional comparative EU law and Protection of Human rights, Member of

Venice Commission of the Council of Europe, he has been Visiting Professor and Scholar UVA and Catholic University of America Law Schools in the US.

Cyprus

Aristoteles Constantinides

LL.M. and Ph.D. (Thessaloniki). Lecturer in International Law and Human Rights and founding member of the Law Department of the University of Cyprus. His research interests include human rights, the United Nations, international terrorism and domestic implementation of international law. Dr Constantinides has been a lawyer in Greece, an assistant of the Institute of International Public Law and International Relations of Thessaloniki for several years and a visiting scholar at the European Inter-University Centre for Human Rights and Democratisation in Venice. He reports on Cyprus for the Oxford Reports on International Law in Domestic Courts and he is a member of various academic networks, including the International Law Association Committee on Non-State Actors.

Czech Republic

Filip Křepelka

JUDr. (Masarykova univerzita, Brno, CZ), Ph. D (Masarykova univerzita, Brno, CZ), Doc. (Masarykova univerzita, Brno, CZ).

Since 1997: lecturer at Masarykova univerzita, Brno, CZ; since 2009: associate professor.

2004-2008: advisor for European Union law at the Supreme Administrative Court.

Lectures and research interests: European Union law (free movement of services, multilingualism of the European Union, implementation of EU law in Czech legislation), health care law (European integration of health care), law of global economic integration. Papers, articles and books published on issues of integration of health care in the European Union, on economic, legal and administrative consequences of multilingualism, and many other issues.



Denmark

Astrid Kjeldgaard Pedersen

LL.M. (University of Copenhagen, DK), Ph. D candidate, University of Aarhus, DK.

Research interests: Public international law, international criminal law, the position of the individual in international law, the immunity of State representatives, transitional justice

She has published a monograph in Danish entitled ‘Statsrepræsentanters immunitet’ (‘The Immunity of State Representatives’) (Thomson, 2005) and several articles on Head of State immunity, international norm conflicts and genocide in Danish law journals. Her article entitled ‘The Evolution of the Right of Individuals to Seize the ECtHR’ was recently accepted by Journal of the History of International Law. She is currently doing research for a PhD on the position of the individual in international law.



Estonia

Renè Vark

LL.M. (Stockholm University, SWE), Doctoral Candidate (University of Tartu, EE)

Lecturer of International Law, Deputy Head of the Chair of International and European Law, Faculty of Law, University of Tartu, Estonia.

Research interests: public international law, use of armed force, law of armed conflict, diplomatic and consular law.

He has published about twenty articles in English and Estonian on different issues of public international law and two books in Estonian, entitled “Introduction to International Law” and “Diplomatic Law”. His doctoral thesis is about the possibility of self-defence and collective

security system in the context of terrorist non-State actors. He is executive editor of an international law and relations journal *Acta Societatis Martensis*.



Finland

Lotta Viikari

Ms. Lotta Viikari serves as Professor of Public International Law at the University of Lapland. She holds the degree of Doctor of Laws from the University of Lapland, the degree of Licentiate of Administrative Sciences from the University of Joensuu, and a Master's Degree in Law from the University of Lapland. Previously, Prof. Viikari has worked as a researcher in the Northern Institute for Environmental and Minority Law (Arctic Centre), University of Lapland. She has also, *inter alia*, served as an Acting Professor of Private International Law at the University of Lapland and as an Assistant Professor in Constitutional Law and International Law at the University of Joensuu. Prof. Viikari has published especially in the areas of space law, international environmental law, and law of the sea. Her publications include three monographs of which *The Environmental Element in Space Law: Assessing the Present and Charting the Future* (Studies in Space Law, Vol. 3, Martinus Nijhoff Publishers, Leiden/Boston, 2008) has been awarded the Social Science Book Award of the International Academy of Astronautics in 2009 and the Finnish Lawyers' Society Award for the best legal PhD dissertation in Finland in 2007.

Johanna Tornberg

Master of Law (University of Lapland, FI), trained on the bench.

Researcher, Ph.D. student, University of Lapland.

Research interests: Information Law, Administrative Law, legal quality, guardianship services, information government.

She has published in KnowRight 2010 Conference proceedings on the legal quality in guardianship services in Finland entitled: 'Legal Quality in Guardianship Services'.



France

Marie Gautier Melleray

LL.M. (Bordeaux, France), Ph. D. (Bordeaux, France).

Professor of public Law at the Faculty of Law of the University of Bordeaux and coordinator of the Master I on European Union Law. She actively participates in the European Group of Public Law (EGPL) and in the European Community Study Association (CEDECE). In the past, she mostly worked in the field of European law including its interaction with domestic Law. She published several books on the European immigration policy and a number of contributions on the adaptation of the French regulatory framework to European Union Law requirements.

Catherine Gauthier

LL. M. (Toulouse, France), Ph. D. (Bordeaux, France).

Lecturer in public law at the University of Bordeaux IV and co-ordinator of the Master II Pro on European Law.

Her research interests include European law, Council of Europe law and especially the European Convention on human rights' system. She has recently published, in collaboration with Marie Gautier, a book on the EU immigration's policy and she has also published several contributions on human rights in Europe (right to a fair trial) and on the impact of European law on the national legal system.



Germany

Matthias Hartwig

Senior Researcher & Lecturer at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany

Julian Nowag

Dipl jur (Johann Wolfgang von Goethe University, Frankfurt) LLM European Legal Studies (University of Durham) MSt in Law (University of Oxford). DPhil Student, University of Oxford.

Research interests: Public international law, EU Law, Public Law and Competition Law.

He has published on EU law and Competition Law



Greece

Photini Pazartzis

DEA (University of Paris-II), PhD (University of Paris-II), Associate Professor of Public International Law at the National and Capodistrian University of Athens.

Her research interests include international dispute settlement, international courts and tribunals, international criminal law. She has recently published a book on the repression of international crimes.

She has been a Visiting Fellow at the Lauterpacht Research Centre for International Law (Cambridge) and Visiting Professor at the Universities of Paris-I and Paris-II.



Hungary

Eszter Kirs

Ph. D (University of Miskolc, Hungary).

Lecturer, University of Miskolc.

Research interests: Public international law, international humanitarian law, international criminal law, transitional justice.

She has published mainly on international criminal law and transitional justice. Her paper entitled 'Possible models for the regulation of simultaneous functioning of truth and reconciliation commissions and criminal courts' was prepared and published within the program 'Centre for Studies and Research' of the Hague Academy of International Law; and her paper entitled 'Complementary Relationship Between the International Criminal Court and Truth Commissions' within the Marie Curie Research Project of the Grotius Centre for International Legal Studies. She was a Fulbright Visiting Researcher at the Columbia Law School and interned at the Prosecutions Program of the International Centre for Transitional Justice.



Ireland

Clive R. Symmons

LLB (Bristol), PhD (Bristol), Dip.Ed (Oxford) of Grays Inn

Barrister at Law, is a Research Associate in the School of Law, Trinity College Dublin and Adjunct Professor in the Faculty of Law, University College, Galway. Of particular relevance to the present assignment, he has taken part, as Irish correspondent, in past European study group projects concerning international legal issues, including the incorporation of international and EU law into EU States and on nationality and citizenship in Europe, with chapters on the Irish position in published books resulting therefore (respectively edited by Eisemann & Weil). He has also written extensively on international legal issues affecting Ireland, particularly relating to the law of the sea, both in books and periodical literature.



Italy

Vincenzo Ferraro

LL.M. (University of Pisa and Scuola Superiore Sant'Anna, Pisa), Ph.D. (Florence University). Professor of Public Services Law at the University of Siena (Italy, 2007/2008 and 2008/2009) and Research Assistant in Administrative Law in the Public Law Department in Florence University. His research interests include European Administrative law and, in particular, public procurement and public utilities. He has recently published a book on the “public-private partnerships”. He has been a Visiting Fellow at the Faculty of Science Po' in Paris (2010) and at the Richmond University (2010). He has been a lawyer in Grosseto and in Florence since 2006.



Latvia

Kristine Kruma

MIL (Lund University, Raoul Wallenberg Institute), LL.D. cand. (Lund University, Sweden).

Lecturer, Riga Graduate School of Law.

Research interests: Public international law, international organizations, EU constitutional law, EU citizenship, national citizenship, diplomatic protections and migration law.

She has published on the Latvian citizenship policy in the volume edited by R.Bauböck, B.Perchinig, W.Sievers, *Citizenship Policies in the New Europe*, entitled: “Checks and balances in Latvian nationality policies: National agendas and international frameworks”. She has recently published an article on Constitutional Courts in the *Europeanisation of National Constitutions*, edited by C. Closa and an article on Latvian Integration Policy, edited by R. Van Oers, E. Ersboll and D. Kostakopoulou.



Lithuania

Saulius Katuoka

Doctor of Social Sciences (Sankt Peterburg University, Russia). Professor (Mykolas Romeris University, Lithuania)

Research interests: International Public Law, Human Rights, Law of the Sea, International Treaty Law, European Union Law.

His scientific works include: *Deviations from commitments under the European Convention on human rights and fundamental freedoms in case of the state of emergency* (co-author M.Krasnickas). *Jurisprudence*. Vilnius, 2008, 3(105), p. 27-36; *Republic of Lithuania materials on international law 2007* (co-author L.Šaltinytė) in *Baltic yearbook of international law*. Leiden: Koninklijke Brill N.V. 2008, vol. 8, p. 347-384; *Peculiarities of the Constitutional Treaty for Europe*. *Jurisprudence*. Vilnius, 2005, 72(64).



Luxembourg

Florence Giorgi

Master in European Law (2003, University of Aix-Marseille III, France), Ph. D (2009, University of Luxembourg, Luxembourg).

Scientific support staff member, Centre de droit européen, University of Luxembourg

Research interests: European institutional and material law, constitutional law, comparative constitutional law, European constitutional law, constitutional pluralism, legal theory

She has published on constitutional pluralism and its consequences for legal discourse in collaboration with Dr. Nicolas Triart in the *European Law Journal*. She has also published in *Civitas Europa*, a French review on national constitutional law. She took part to many European academic events, such as the 38th edition of the UACES Annual conference, the 3rd International

Graduate Legal Research Conference (King's College, UK) and the ProDoc program organised by the Swiss National Fund for Research (University of Geneva).



Malta

Patricia Cassar Torregiani

BA, LLD, (University of Malta), BCL (Oxon), PhD (IMLI).

Lecturer and Head of Department of International Law, University of Malta

Research interests: Public international law; contemporary maritime threats, primarily piracy and migrant smuggling.

Her writings on piracy and migrant smuggling have been published in various journals and in contributions to books. Her book, “Migrant Smuggling by Sea: Combating a Current Threat to Maritime Security through the Creation of a Cooperative Framework”, was published by Brill/Martinus Nijhoff Publishers in March 2010.

Simone Borg

LL.D. (University of Malta), M. Jur (Int Law) (Hons) (University of Malta), Ph. D (IMLI), Resident Academic University of Malta, Visiting Lecturer IMLI, Catholic University of Leuven, Belgium.

Research interests: Public international law, International criminal law, International and EU Environmental law, International Maritime Law.

Apart from being an academic Dr Borg was a First Secretary with the Ministry of Foreign Affairs and then Head of the Legal and Multilateral Affairs Section within the Ministry of the Environment. During this time she was mainly responsible for negotiating Malta's position in International Environmental Multilateral Agreements, including the Barcelona Convention and its Protocols, the drafting of legislation and legal policy making in environmental law. has published many articles and papers including two Monographs on Malta's Environmental Law.



Poland

Pawel Czubik

Master of Law (University of Warsaw, Poland), Doctor Iuris (Jagiellonian University in Cracow, Poland). Assistant Professor, Institute for European Studies, Jagiellonian University in Cracow

Research interests: Consular and Diplomatic Law, states' cooperation in Civil Legal Aid, Private International Law, International Economic Law.

Author of many papers concerning civil legal functions of consuls, form of foreign acts in private international law. He published also papers concerning Generalized System of Preferences in WTO and EU law. Recently he published on practical realization of Art. 1143 of Polish civil procedure code (concerning applying of foreign law) by courts in Nowy Przegląd Notarialny (New Notarial Review).

Pawel Filipek

Assistant Professor at the Institute for European Studies, Jagiellonian University, Ph.D. in Legal Sciences with specialization in Public International Law. Previously worked at the Chair of Public International Law (1997-2007) and coordinated the Jagiellonian University Human Rights Centre (2003-2007) and Human Rights Clinic (2003-2006). Scholarship holder of the Max-Planck Society. Earlier, Ph.D. candidate at the European Graduate College (Heidelberg-Krakow-Mainz), trainee at the Council of Europe in Strasburg and Polish Ministry of Foreign Affairs in Warsaw. A member of International Law Association – Polish branch (ILA) and European Society of International Law (ESIL).

Academic interests in Public International Law, European Law, Law of International Organizations, Protection of Human Rights and the European Convention on Human Rights, International Control.



Portugal

Patricia Jeronimo

Law Degree (Law Faculty, University of Coimbra), Ph.D. (EUI). Assistant Professor at the Law School of the University of Minho (Portugal), where she teaches Comparative Law and Human Rights. She is a member of the Co-ordination Commission for the Law Degree at the National University of East-Timor and teaches in East-Timor regularly. Her research interests include European Constitutional law, comparative law and human rights. Her doctoral thesis consisted of a comparative analysis of the Portuguese, French and British citizenship and immigration laws, against the backdrop of EU Law and lingering postcolonial ties. In Portugal she published a much praised book on human rights and civilizations, which compared the western and Islamic understandings of human rights, and has been widely published on citizenship, human rights and comparative law.



Romania

Madalina Bianca Moraru

EUI PhD candidate, title of the thesis “Division of international responsibility between the Union and the MSs in the CFSP area”; LLM in European Law, magna cum laude (Durham University, UK); Best Pleader Prize in the European Law Moot Court Competition 2010; Certificate accordé par l'Institut International des Droits de l'Homme, “René Cassin”, Strasbourg, France et bourse de mérite accordé par le même Institut; participation au concours de droit international public Charles Rousseau; legal researcher for Member of the European Parliament, Renate Weber; internship at the Romanian Ministry of Foreign Affairs, department - Government's Agent to the European Court of Human Rights.

Research interests and expertise - EU External Relations, Public International Law, particular interest on State and International Organisation International Responsibility; International and European protection of human rights; EU Constitutional Law.



Slovakia

Katarina Galdunova

Dr. (Comenius University of Bratislava, Slovakia), LL. M. (University of Sussex, UK), PhD. (Bratislava School of Law, Slovakia)

Teaching assistant, Bratislava School of Law

Research interests: Public international law, especially those areas that aim at the position of an individual

She has published several articles on various aspects of international criminal law and international human rights law within Slovak yearbook and journals; “Process of International Lawmaking concerning Genocide, Claims and Counterclaims“, Saarbrücken: VDM Verlag Dr. Müller 2009, and in collaboration with Professor Maria Patakyova “The Slovak Republic: Political Significance, not Legal” in: 60 Years of the Universal Declaration of Human Rights in Europe, Antwerp-Oxford-Portland: Intersentia 2009.



Slovenia

Vasilka Sancin

Ph.D (University of Ljubljana, Slovenia)

Assistant Professor at the Faculty of Law, University of Ljubljana.

Research interests: Public International Law (in particular: Diplomatic and Consular Law, International Humanitarian Law, International Organizations, Peaceful Settlement of Disputes, Law of the Sea, Europeanized International Law).

She is a member of governmental commissions dealing with Human Rights and International Humanitarian Law and a member of Slovenian National Commission for UNESCO. She is also an expert consultant for the Ministry of Foreign Affairs of the Republic of Slovenia. She is author of many scientific articles and monographs in the field of Public International Law.



Spain

Susana de la Sierra

LL.M. (Bayreuth), Ph.D. (EUI) is Professor of Administrative Law at the University of Castilla-La Mancha (Spain) and Co-ordinator of the Master's Programme on European Union Law.

Her research interests include European and Global Administrative law, comparative law and media law. She has recently published a book on film law and has widely published on comparative law as a method of European legal integration. She has been Visiting Fellow at the University of Oxford and the European University Institute (Florence), and Fulbright Visiting Scholar at Columbia University (New York).

Juan Jorge Piernas Lopez

Master of European Interdisciplinary studies (College of Europe), LL.M. (Harvard Law School), Ph.D. candidate (EUI).

His research interests include European and International law, competition and administrative law. He has widely published on European State aid Law and Spanish competition law. He has been visiting professor of International Law at the University of Murcia (Spain).



Sweden

Fia Ramteen

Swedish Master of Laws, Stockholm University, Sweden. Will for the academic year 2010-2011 as a Fulbright Scholar study for a LL.M. in National Security & U.S. Foreign Relations Law at George Washington University Law School, USA.

Currently employed by the Swedish Armed Forces as a Legal Advisor, giving legal advice and support on issues of Public International Law.

Anna Sandström

Swedish Master of Laws, Lund University, Sweden. Studies in European Union law, University of Edinburgh, Scotland.

Associate at the law firm Göteborgs Advokatbyrå AB.



The Netherlands

Annemarieke Vermeer-Künzli

PhD (Leiden University, The Netherlands), MA (Leiden University, The Netherlands).

Assistant Professor, University of Amsterdam, Amsterdam Centre for International Law.

Research Interests: Public International Law, Law of State Responsibility, Law of Treaties, Diplomatic Protection and Consular Assistance.

She has published widely on diplomatic protection in various international journals, including the ICLQ and the EJIL. Her current research focuses on non-recognition of serious violations of peremptory norms. She has been senior editor of the Leiden Journal of International Law. She teaches international law at the University of Amsterdam.



United Kingdom

Craig John Barker

Professor of Law (Law, Justice and Violence Research Centre), Head of Department (Law), University of Sussex.

His primary research interest is in the field of public international law. He completed his PhD on the topic of "The Abuse of Diplomatic Privileges and Immunities" in 1991 and has subsequently written on international immunities from jurisdiction in relation to diplomats, States and heads of State. He has also researched the relationship between international law and international relations and aspects of international criminal law. He completed a book examining The Legal Protection of Diplomatic Personnel in 2006. He has a developing research interests in matter relating to international criminal law and law and international security, including terrorism. He is International Cases editor for the *International and Comparative Law Quarterly*, book reviews editor for the *British Yearbook of International Law* and editor of the *Newsletter of the International Law Association*.

Matthew Garrod

LL. M. (University of Sussex, UK), Ph. D (University of Sussex, UK).

Research Associate, University of Sussex.

Research interests: Public international law, international criminal law, the protective principle of jurisdiction under international law, terrorism, piracy and deportation.

He has published on the deportation of foreign prisoners and the implications under international law in collaboration with Professor J.Craig Barker in the journal of Contemporary Issues in Law, entitled: 'Security or Responsibility: The UK Borders Act and the Automatic Deportation of Foreign Prisoners'. He has recently published a case note on 'Deportation of Foreign Nationals Suspected of Terrorism with Real Risk of Torture', in the Modern Law Review.

